

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**Helena Headquarters**  
**1420 East Sixth Avenue**  
**Helena, MT 59620**  
**November 8, 2001**

**Commission Members Present:** Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; Darlyne Dascher; John Lane and Mike Murphy.

**Fish, Wildlife & Parks Staff:** Jeff Hagener, Director; and other Department personnel.

**Guests:** Kelly Gorin, Governor's Office; Charlie Johnson, MT Bowhunters Assoc.; Elaine Mann, Broadwater Co. Commissioner; John Wilson, Montana Trout Unlimited; Bill Holdorf; Skyline Sportsmen; John Winnie, Flathead Trout Unlimited; Mike Sedlock; Walleyes Unlimited; Michael Babich, Great Falls Tribune; Jim Martin, Helena; Arnie Gidlow, Missouri River Foundation; Mary Ellen and Monte Schnur, MOGA; Craig Sharpe, MT Wildlife Federation; Tim McAlpine, Helena Chapter, Walleyes Unlimited; Curtis Spindler, MT Bass Federation; Jean Johnson, MOGA; John Gibson, Billings; Larry Copenhaver, MT Wildlife Federation; Jim & Rebecca King, Friends of Blanchard Lake, Whitefish; John Arrigo, MT DEQ; Peggy O'Neill, Helena Independent Record; Darrel Zauner, Sophie Lake, Eureka; Erin Everett, Associated Press.

**Present but did not sign in:** Tim Johnston.

**Topics of Discussion:**

- 1. Opening - Pledge of Allegiance**
- 2. Approval of Commission Minutes, October 12, 2001**
- 3. Approval of Commission Expenses through October 31, 2001**
- 4. Governor's Safety Award**
- 5. 2002 Commission Calendar**
- 6. Lone Pine State Park - Information**
- 7. Travelers Rest State Park - Information**
- 8. Darryl Wilson Land Donation - Final**
- 9. State Parks Fee Rule - Final**
- 10. Closures for Bean and Bynum Lakes - Tentative**
- 11. 2002 Commercial Fishing Regulations - Tentative**
- 12. Darlinton Ditch Fishing Closure - Final**
- 13. 2002-2003 Fishing Regulations - Final**
- 14. CR Kendall/Canyon Resources Mineral Interest Donation - Information**
- 15. 2002 Annual Rule for Sale of Nonresident Combination Licenses - Final**
- 16. Bonus Point System Rules - Final**
- 17. Blanchard Lake Rule Change - Petition**
- 18. Sophie Lake Rule Change - Petition**

**19. Mandatory Bear ID Testing - Final**

**20. Beckman Estates Donation - Information**

**1. Opening - Pledge of Allegiance.** Chairman **Dan Walker** called the meeting to order at 8:05 a.m. and led the Pledge of Allegiance.

**2. Approval of Commission Minutes.** Mike Murphy wanted his name added on page 17, third line from the bottom, so it reads: "**Dascher** and **Murphy** are hesitant but will vote in the affirmative in order to get public comment."

***ACTION:** With the above change, the minutes of the October 12, 2001 meeting were approved.*

**3. Approval of Commission Expenses through October 31, 2001.**

***ACTION:** **Dascher** moved approval of the Commission expenses through October 31, 2001. Seconded by **Lane**. Motion carried.*

**4. Governor's Safety Award - Jeff Hagener**, Director, briefly described the program and introduced **Doug Denler**, FWP Personnel Manager. **Denler** said four agencies received the award. The Department was very supportive of the safety program. He read from award, "Received a rebate of \$60,000 from last year, which was all turned back into the program. Safety has its own reward. FWP has a good program because the best people are hired." **Denler** accepted the award on behalf of all FWP employees and the Commission.

**5. 2002 Commission Calendar** - The calendar is tentative at this point. **Walker** gave the following preferences: January 10, February 6 or 7, March 6 or 7, April 3 or 4, May 8 and 9, and June 4, 5 or 6. There usually is no meeting in July, but preference is July 11. For the remaining months it would be August 6, 7 or 8; September 10, 11 or 12; October 8, 9 or 10; November 5, 6 or 7; and December 10, 11 or 12. **Dascher** suggested the April meeting be held in Glasgow and be two days. April 3 and 4 in Glasgow were agreed upon. **Walker** wants the Commission to meet in at least one other location besides Glasgow, and perhaps two other locations. Suggested Kalispell, with Billings or Miles City possibilities for another meeting. **Hagener** said meetings in February, June and August are better in Helena because of "Finals" on quotas, seasons, regulations, etc. **Dascher** pointed out that the January meeting could be held somewhere other than Helena. **Larry Peterman** said because Wildlife Tentatives and Finals require so many Helena staff to be present, meetings requiring those actions are better held in Helena. **Hagener** agreed that meeting in Billings, Miles City or Kalispell are good suggestions. Great Falls is another possibility. **Walker** said they would continue to look at this tentative calendar and bring in the final one at the December meeting.

**6. Lone Pine State Park - Doug Monger**, Parks Division Administrator, welcomed Mike Murphy as the newest Commissioner.

He wants the Commission to be comfortable with acquisitions and donations. It's a process that can take up to a year. The first two items, Lone Pine and Travelers Rest State Parks, are thumbs up/thumbs down issues. In the case of Lone Pine State Park, an individual is interested in selling

a 42.13-acre parcel, which is adjacent to the park. It is forested property and would provide a buffer between the park and Kalispell. It would add to the recreational land base of Lone Pine and create an opportunity to expand the existing hiking and equestrian trails at this day-use park. The public currently uses much of this site as if it were public land. At this time, the Parks Division is asking the Commission for approval to proceed with negotiations with the landowner, conduct an appraisal and do an Environmental Assessment.

**Murphy** asked if there were concerns from the county commissioners over appraised value. **Monger** said there must be an appraisal and they must meet federal standards. They occasionally hear from counties about loss of tax revenue, but in this case the county is very supportive as the benefits outweigh any loss of tax revenue.

**Walker** asked about the nature of subdivisions to the south and east. **Monger** said it is not presently a subdivision, although the landowner has it platted for subdivision.

**Dave Landstrom**, Region 1 Parks Specialist, said they held a scoping meeting in Missoula a month ago. There are 18 homeowners who support this acquisition, and are anxious for us to acquire the property and provide some parking.

**Monger** said there is a difficult parking situation east of there. It's a standard two-lane road without shoulders and creates a problem for landowners. Our hope is to use part of the property for parking.

***ACTION:** Walker said to proceed with this acquisition.*

**7. Travelers Rest State Park - Doug Monger** said the nine months ago FWP accepted a 15-acre donation near Lolo from the Conservation Fund to create this park. The park was an important rest site for the Lewis and Clark party, a traditional rest-camp area for Native Americans and encompassed historic hunting grounds for the Salish-Kootenai. The original 15-acre donation does not encompass all of the historic Lewis and Clark rest area. The Conservation Fund has negotiated other land donations and acquisitions with other landowners in the area. These would help to create a buffer zone and trail system. A private party purchased Parcel A to protect it from subdivision and then the Conservation Fund acquired it with the primary thought of it becoming part of a state park with opportunity for trailheads, trails, parking, etc. The intent of the department is to proceed with future acquisitions using donated land values as a match for federal Land and Water Conservation Funds to secure additional fee title or conservation easements at Travelers Rest. The Parks Division is asking Commission for permission to start formal negotiations to acquire pieces or even all of Parcel A and others.

**Murphy** asked if they had received any feedback from neighbors regarding this acquisition. **Monger** said the community of Lolo is supportive. They have not yet done a formal scoping process but may hear comment that the state shouldn't own any more property.

**Dascher** asked if there were any plans to develop some of it. **Monger** said the plans are for trail development and conservation/scenic easement.

***ACTION:** Murphy recommended moving forward on this project; the other Commissioners agreed.*

**8. Darryl Wilson Land Donation. Doug Monger** - A private landowner approached FWP about a year ago with a proposed 320-acre donation on the condition an appraisal be completed to assess tax benefits. The appraisal was completed in August with an appraised land value of \$32,000. The comment period for the EA closed in October and the Decision Notice was issued on October 25, 2001. They received four comments, which were minor. Concern was raised over prairie dogs and wolves, with the desire they not be introduced on this land. Another concern was over public access. They received a letter of support from the Montana Wildlife Federation. There is no evidence of hazardous waste disturbance and no indication the site has been used for anything other than open rangeland grazing.

The Parks Division views this as a cash donation until it can be traded. It will not be managed as a state park. Parks is requesting Commission approval to accept the acquisition of this 320-acre donation.

**Walker** had a question on how taxes would be handled. **Monger** said that because it will not be managed as a state park, taxes would be paid on the parcel. They are insignificant, however. A concern in the Parks Division is not having a land acquisition account so a parcel like this is a big deal. **Murphy** asked if there was some kind of commitment for access. **Monger** said it was unlikely as that would fall on BLM, which has adjacent lands.

***ACTION:** Lane moved that the donation be accepted; Walker seconded. Approved.*

**9. State Parks Fee Rule - Doug Monger** said the Commission typically reviews this rule. At the September 6 meeting, the fee rule was accepted with 2 exceptions: the Commission did not want to shorten the time frame for the Early Bird Park Passport sales, and the Smith River Rule was removed from the Parks fee rule and acted on at the October Commission meeting. For today, discussion points will only be on the fee rule part, and at the December meeting will be coming back to discuss the Smith River.

**Monger** - Subsequent to that September 6 meeting, the fee rule went out in normal press releases and notices for public comment. What the public was commenting on is shown on the second page of the handout. Went over some of the proposed changes. Suggest the addition of seven new sites within the Fishing Access Site program to add camping fees. Reminder that camping fees are charged at Fishing Access Sites where it is cost effective to do so. We typically charge when people go there just to camp and for travelers who use a FAS as a wayside, but not for people who are there to fish. Fishermen support all of our FASs as the whole program is supported through fishing license dollars. If you're camping at a FAS and have a fishing license, it's \$5/night. If you don't have a fishing license, it's \$10/night. Camping at these sites creates an additional maintenance and operations burden, and thus expense for the agency.

**Monger** - Within the Parks Passport tentative fee rule, suggest changing the resident Parks Passport from \$20 for the first one and \$10 for the second one, to \$24 for the first and \$15 for the second. Four years ago we created a fee differential between residents and non-residents. It

didn't turn out to be a very popular program with non-residents and was hardly worth the \$4 difference for the hassle of paying more just because a non-resident. Suggest changing the Early Bird Passport from \$16 to \$20, leaving the timeframe the same, and adding a 50-cent convenience fee for passports sold over the Internet. We're currently doing that now via a contract with the vendor providing the Internet service. We want to formalize that within the fee program.

There's been no change to the low-income passport. Also adding the Alberton Gorge rule back in with no changes as it was inadvertently left off in 1999. During the public comment period received 11 public comments. Subsequent to the mailing we sent you, received two additional comments.

Open to answer any questions you may have and would request the Commission approve the tentative fee rule as it was proposed in September with no additional changes, additions or corrections.

**Dan Walker** - First question I have is on page 2 under "Park Passports," the section in italics at the end of that, look at the last sentence. I believe it should be deleted. (Sentence reads, "The Early Bird season is being shortened because we feel with the existing schedule we have one of our main products 'on sale' too long and we are losing too much potential revenue.")

**Monger** - You're correct. That should be deleted. That was an informational item only for the Commissioners, not part of the fee rule itself. That season of the Early Bird passport, there will be no change from previous biennial fee rules. It will be Dec. 1 to Feb. 15.

**Mulligan** - Received a comment that the Dearborn FAS was donated with the stipulation that it remain a free access site. I had asked if we could go back and verify that.

**Monger** - We did check into that. The commenter was incorrect. There is no stipulation that that be a free site.

**Mulligan** - Second question. I had asked whether or not the Early Bird discount was available on the Internet, and I was told it was not. Is that true?

**Monger** - That is true. The Internet sales would only be at the full price rate.

**Mulligan** - I had a question on Dailey Lake. Are we going to increase the service there?

**Monger** - Though we didn't get a lot of comments on the fee rule, five do stand out. We have no plans for increasing the level of development there. The fee reflects the increased services we have provided over the past years, and the increase in the number of visitors we're getting at Dailey Lake who are there for non-angling purposes. For instance, it is used as a wayside stop by travelers from Yellowstone Park, and folks use the reservoir for pleasure boating and wind surfing.

**Mulligan** - My big question is, are we charging the right people?

**Monger** - The increase appears to be from the increase of campers. The workload comes from people who are staying overnight or a week.

**Dascher** - What's the new one on Marshall Cove?

**Monger** - Marshall Cove is one of the five areas within Cooney State Park. During the last two years, we have made site improvements at Marshall Cove and at Red Lodge Arm. Cooney has the highest use in our state park system. It has over 200,000 annual visits and the social conflicts there are unbelievable. It was a resource protection issue there, but it was also a social management issue to make some campground improvements.

**Dascher** - Is there a way to put in a reservation system there?

**Monger** - Have considered a reservation system throughout our systems, mostly in the Flathead area. They are expensive to manage and not very friendly to folks just wanting to go out for a weekend. Most people do not seem to want a reservation system. Part of this comment may reflect on just the fact Cooney has changed.

**Walker** - I'd like to expand on the discussion on the Internet sales. Is it obvious to the purchaser using the web site that they can't take advantage of the Early Bird sale?

**Monger** - It is not at this time because we implemented the Internet sales after the Early Bird season was over last year. We made a real distinct decision not to put Early Bird sales on the Internet for two reasons: it would require allocating a second passport for our people on the Internet to advertise, and the Internet sale is a fairly expensive operation. The 50-cent surcharge we've put there and the 50-cent fee the license agent gets for selling each one of the passports barely covers, if at all, the cost of the Internet sales. Additionally, we're directing our Internet sales to non-residents. Historically, we've tried to use the Early Bird passport as a resident discount without calling it that. You kind of get the local's discount by having it available only at our Regional offices and license agents. We did make a distinction between the Internet sales and in-person sales for that very reason.

**Walker** - I'm concerned about the potential for a resident or non-resident purchasing on the Internet and not getting the Early Bird discount, which is otherwise available. From my perspective, that's a bit deceptive.

**Monger** - On Internet sales during the Early Bird time period, we could flag it with a statement that if an individual were able to purchase this in person from December 1 to February 15, you will receive a 20% discount. (I think it's about 20%.) We could advertise there that if for convenience sake you purchased it on the Internet, you would pay the full price.

**Mulligan** - I don't really care how you do it. It just needs to be clear to people what they're doing and what is available. I don't have a problem with it not being part of the rule. I just want it to be clear to people.

**Monger** - I'm not sure the rule reads now that there is a distinction. It clearly does not say that the electronic version is NOT discounted at the Early Bird rate. What I would recommend is put the flyer on the Web page that says if you are able or care to purchase this between these dates in person, you'll receive the Early Bird discount.

**Walker** - I will agree to that as a stopgap measure, but I'd like to have you fix it so that people can buy via the Internet and enjoy the discount.

**Monger** - We shortened the Early Bird season initially because they are a major part of our funding. If you put what you have on sale during much of the year, you're losing potential revenue. To my way of thinking, that would carry over to the Internet. As it becomes more and more of our sales, we may want to then reconsider the dates where we put it on sale. The issue is we're taking our main product and it's on sale a substantial part of the year. I'm concerned about adequate revenue for operation. That's the line we're trying to walk.

**Mulligan** - Maybe we need to ask why we're putting it on sale? What was the purpose of the Early Bird sale?

**Monger** - That started when the original day use fee went in in 1989. It was to give the residents an opportunity to get a good feeling for part of the year about getting a resident discount.

**Walker** - Was that at the time you were beginning to implement fees where there had not been fees before?

**Monger** - That's correct. It was at the start of the fee system.

**Walker** - I will entertain a motion on this or amendments, if there are any.

**Murphy** - I'd like to ask one more question. This is on Dailey Lake, Dearborn, etc. It says we charge for camping where it is cost effective to charge and collect fees. What is the determination as far as cost effectiveness? Is it a break-even situation? I assume there is something there over and above the cost that results in the recommendation to add a fee.

**Monger** - One of our standards is that it is cost effective. We don't have a standard for our park managers who make the recommendations here. Our managers are as reluctant to charge fees as you are. They don't enter into this lightly. It's the cost of the caretaker; it's the cost of the maintenance crew, etc. The break-even point at these access sites is \$2,000 to get us started, and then the caretaker time thereafter and some maintenance on the site. Even with this change, we'll only be charging at 38 of the 320 FASs. Camping occurs at a good share of those others.

**ACTION:** *Mulligan said if we have no intention of providing the Early Bird over the Internet, I would move that we amend this section under Passport Sales, item A to read: "The public may purchase state park passports (with the exception of Early Bird) via the Internet." Page 9 of the Rule. Dascher seconded.*

**Walker** - Are you intending to make a motion involving Daily Lake or any of the other locations? **Mulligan** said this is the only amendment.

***ACTION:** Walker asked if there were any other amendments. Now we're voting on this amendment. Motion passed.*

***ACTION:** Dascher - Now I will move that we accept the Biennial Fee Rule for the State Park System as amended. Lane seconded. Walker asked for public comment? There was none. Motion passed.*

**10. Closures for Bean and Bynum Lakes - Tentative.** **Chris Hunter**, Acting Administrator, Fisheries Division, said the first item for Fisheries is a tentative closure for both Bean and Bynum Lakes. Bean Lake is a trophy trout fishery and Bynum is primarily a walleye fishery. Both have been substantially affected by the drought and lake levels are very low. This year we're putting windmills on them to try to keep them open, oxygen in the water and aeration to try to keep the fish alive. Because we will try to keep part of the lake open, we're concerned about safety of the ice. As a result, we are asking to close those two lakes to fishing this winter. Primarily, this is a safety issue, and it's a tentative. Steve Leathe, Region 4 Fisheries Manager, is here if you have any questions that I can't answer. **Lane** asked why do this as a tentative? **Hunter** said the only reason is so people would have an opportunity to comment on it. Plus, these lakes won't be frozen until later so can do as a tentative this time and finalize in December. **Murphy** asked if aeration has been done successfully in the past as far as saving the fish. **Hunter** responded that windmills were used at both last year, and aeration was done at Bynum last year and it was successful. **Murphy** asked if the benefit to the fishery exceeds giving anglers the opportunity to go in and harvest those fish. What if the fish die from low water levels? **Leathe** said can't guarantee that it will work. It is still experimental, but is the best we can come up with at this time.

***ACTION:** Lane moved to accept the department's recommendation as a tentative; Dascher seconded. Walker asked for public comment on this closure of Bean and Bynum Lakes. There was none. Motion passed.*

**11. 2002 Commercial Fishing Regulations - Tentative.** **Hunter** said the next item is regarding the commercial fishing regulations on Lake Helena, Hauser and Holter Reservoirs. There has been a commercial fishery for carp on these bodies of water for a number of years. This is an annual process that we go through to renew the license. The owner of the business, Jim Martin, is here today.

**Jim Martin**, owner of commercial inland fishery. Thanked Karen Zackheim and Larry Peterman in the Fisheries Division for their gracious cooperation. Have come to them many times asking for experimental permits out there, and they have honored those. Haven't fished hard for two years and in the process of trying to sell the business, which has been in Helena since 1961. It's a viable business. Working with Mountain Lake Fisheries in Kalispell and Allied Engineering in Bozeman. There is still a demand for carp for human consumption and for fertilizer. All of those in trout and walleye fisheries want him to continue. Will do that. It's a fertilizer business in Kalispell, which will provide transportation for the carp. The sports fishery



and duck hunters want him to remove the carp. Had an EIS done on Lake Helena and at Holter. That is in effect and have complied with it, as well as with the Audubon Society. Asking the Commission to continue to honor the commercial fishery. Has been asked to work on the south end of Canyon Ferry. The biomass is there, and in the shallow water (12 feet or less) doesn't think it will affect walleye or trout.

**Hunter** - Jim mentioned the EA that was done on this a few years ago, and that was with respect to potential impact on waterfowl. That was addressed a couple of years ago, and subsequently has not been an issue.

**ACTION:** *Mulligan moved for approval of the tentative 2002 Commercial Fishing Regulations for Lake Helena and Hauser and Holter Reservoirs. Lane seconded. No public comment. Approved.*

## **12. Darlinton Ditch Fishing Closure - Final.**

**Pat Flowers**, Region 3 Supervisor - Passed out maps of the Cobblestone FAS and map of FASs across the region to give some perspective on where Cobblestone is on the Madison relative to the other nearby FASs. Today asking Commission to consider an immediate fishing closure on Darlinton Ditch. This is one action in a larger strategy to limit the spread of exotic New Zealand mud snails. It's also a part of the biennial regulations. Although this is a separate action being considered today, have identical regulations recommended as part of the biennial package. The decision being considered today is only related to the immediate closure. The same thing will be reconsidered as part of the biennial package.

Will give you the larger context for this fishing closure and how this fits into our overall strategy for dealing with New Zealand mud snails. In June of 2000, New Zealand mud snails were discovered on about a 2000-foot section of Darlinton Ditch. (Indicated on a map where the infestation occurs on the FAS.) New Zealand mud snails were first discovered in this area in Yellowstone National Park on the Madison River. They have spread on the Madison and are now down below Quake Lake. They have been seen near the Reynolds Pass Bridge, so they are moving downstream. The impact on the fisheries is unknown. They are not a good food source for fish as fish cannot digest them. An additional concern is they can displace other aquatic invertebrates and there is some research to support this. Thus, they can change the food availability for fish. Do not have a great deal of science on this at this point, however. Little is known about how to control the spread of New Zealand mud snails. After reviewing the literature and talking with scientists in other states, our conclusion is that the best we can hope for is to attempt to limit the spread of New Zealand mud snails at this location. We don't feel it is possible to target their total eradication from the Madison River given their current distribution and the way they are moving downstream. Hope to slow down their spread in order to provide an opportunity to learn more about them, how to treat them and if we have any ability to eradicate them. They may help us ultimately in other parts of the Madison River, as well as other rivers should they spread there.

Given that my approach is try to manage the risk associated with this, we propose several actions. The first was closing Cobblestone FAS and we closed that in June 2000. Then we

considered three additional actions. One was construction of an enclosure around the area of infestation on the FAS and construction of a bridge over the ditch to allow access to the Madison River from the Cobblestone FAS parking area. (That was a separate EA.) In another EA we considered reducing the number of mud snails by applying a molluscicide. Finally, what is before you today, is we wanted to consider a fishing closure on the Darlington Ditch in the area of infestation with the small buffer. We prepared EAs for those actions to address the infestation. They were offered for public comment in May 2001, with a 31-day comment period. We also had public meetings in Bozeman and Three Forks on those actions. On July 27 I issued a decision to go ahead with construction of the footbridge and construction of a fence to discourage people from wading through the ditch and carrying mud snails from the ditch into the Madison at that location. Further, as part of that, my decision was to reopen the site after the enclosure and the bridge were installed. The Cobblestone FAS falls midway between Greycliff and the Milwaukee Station FASs. The distance between those 2 sites is about 16 miles. It is a key access point for sportsmen and we heard that in a lot of the comments.

On the second proposal, my decision was to attempt to eradicate the mud snails in the Darlington Ditch using a molluscicide. This decision was provisional pending the results of bioassays, which are basically tests to determine the susceptibility of New Zealand mud snails to the chosen molluscicide, a chemical called Baylicide. Part of my decision was to conduct those tests before applying it operationally.

That gives you an overview of the fishing closure, which is one piece of the broader strategy. The decision before you today is whether to implement an immediate closure on Darlington Ditch. The closure would be applied in the area of infestation from a point 500 yards above the northern boundary of Cobblestone FAS downstream for about a mile and a half. This closure would remain in place until the success rate can be determined as far as eradication of the New Zealand mud snails. Consider this an independent action to keep people out of the stream during this action.

**Mulligan** - Would FWP still want to go forward with this closure if we did not put the bridge in? If we did not go forward with the mud snail eradication process, would we still want to go forward with this closure?

**Flowers** - I consider this an independent action and I don't think it is contingent on either of those decisions. I would recommend that we close it in the area of the infestation as indicated to keep people out of the stream as much as we can.

**Mulligan** - So we can deal with this as it is, and then deal with the other issues as they come up?

**Flowers** - Correct.

**Murphy** - Is it something that has an impact on other aquatic organisms?

**Flowers** - We know that it will kill fish so it will be a temporary setback of the fishery currently in the ditch. It will probably kill most of the other aquatic invertebrates in that stretch. It is virtually non-toxic to mammals. It is an EPA-registered pesticide.

**Dascher** - Are you going to try to block the ditch, or will it go down into the river?

**Flowers** - One of the things we want to test is our ability to neutralize it. If we determine that we can't neutralize it, then we wouldn't apply it operationally. Our intent is to not let it get to the river. It does dissipate in flowing water pretty quickly so we don't think that will be a problem.

**Dascher** - How about the mud snails down past the ditch?

**Flowers** - As far as we know, there are no mud snails in the Madison River in that stretch. They are below Quake Lake about as far as the Reynolds Pass Bridge.

**Murphy** - Are other states dealing with this same issue and, if so, do they have a strategy that tends to be successful as far as controlling them?

**Flowers** - The first place they were located was in Yellowstone National Park. Yellowstone is studying the problem and doing some research on it, but they haven't attempted any kind of treatment. They are also found in the Snake River in Idaho. To my knowledge, Idaho has not attempted to eradicate them. As their name suggests, they are from New Zealand. They have a healthy trout system in New Zealand and they have adapted. As with any exotic, when you introduce it into a completely different system on a different continent, we're not sure what the effects will be. There are many unknowns at this point.

**Lane** - I'm not sure I understand the process to neutralize this chemical. What's going to be used to neutralize it?

**Flowers** - Dilution is part of the process to neutralize it. There are other agents you can put in the water to drop it out of the water and into the streambed.

**Lane** - Do the snails seem to be moving rapidly down through this area?

**Flowers** - Not that rapidly, but we don't know since we just discovered it last year.

**Walker** - Do you have a prediction of when it will get to the river?

**Flowers** - No. I know they reproduce rapidly and reproduce asexually. The estimates are 300,000 per square meter where the infestation occurs. They are capable of producing a lot more very fast. But I don't know specifically how soon they would move downstream. This is generally pretty slow moving water so there is not a lot of velocity to move them.

**ACTION: Mulligan** - *Given that the action now is simply a closure of Darlinton Ditch and we are not speaking to the bridge, nor are we speaking to the application of the chemical, I move final approval of closure of the Darlinton Ditch as proposed by the department.* **Lane** seconded. **Walker** asked for public comment. There was none. **Motion carried.**

**13. 2002-2003 Fishing Regulations - Final.** Hunter said that in the materials, after Karen Zackheim's memo, there are several yellow sheets of paper, and behind that is a set of white sheets. The white sheets are all of the proposed regulations. The yellow sheets are where we received comments where 10% or more opposed the proposed tentatives. For most of the proposed regulations, there was little or no opposition. What I would like to do, with your permission, is work off the yellow sheets where we received opposition to the proposed tentatives, do the statewide issues, ask you to adopt, have public comment, and then move to the western district, the central district and the eastern district.

Starting with statewide, the first issue where we received comment was licenses and fees. The tentative on this was for nonresident fees. The tentative would raise the conservation license from \$5 to \$7, the 2-day from \$10 to \$15, and the season from \$45 to \$60. Of the comments received, 23% were opposed. The comments were mixed where some thought we weren't charging enough and some thought we were charging too much. Our recommendation is to adopt that tentative as it is proposed.

The second one is on nets and traps. The issue here is cast nets for fishing. The use of these nets is quite limited. We had suggested in a tentative that the maximum size of the cast net be eight feet in diameter. The comment we received from those folks using cast nets is that 12 feet is an appropriate size. So we're suggesting retain the current regulation and delete the proposed tentative.

On the next page the third issue is labeled "bait," and there were a couple of things we received comment on here. One of the tentatives is to add leeches from approved sources as legal bait. One is allowing children 14 years and younger to utilize bait in areas where others cannot, and the final one is prohibiting the taking and using of crayfish as bait.

We received a fair amount of comment. People were opposed to the prohibition on using crayfish as bait largely because they don't believe there is adequate evidence to support the theory that crayfish are possibly transmitting whirling disease. We did hear a lot of support for allowing the crayfish in waters where crayfish are collected.

Regarding kids 14 years and younger, we had numerous folks (including FWP biologists) who are opposed to this blanket exception. It's primarily because there are a lot of special regulations that have been put in place for specific reasons, and a blanket exception did not seem like the best way to go with this. We discussed doing it on a water-by-water basis where we thought it would be okay to provide this exception for kids 14 years and younger.

We have two recommendations here. One on the crayfish is to change the tentative to allow the use of crayfish as bait, but prohibit the commercial harvest or sale of crayfish as bait. The sale of crayfish for human consumption is already prohibited. We think if we do this, most of the crayfish use will be in the water where it is collected, for which is what we got a lot of support.

The other thing we've included here is leaving the statewide exception for kids to use bait, and considering changes on a water-by-water basis. Specifically, this time we recommend that kids be allowed to use bait on the Yellowstone River.

The next one, which generated quite a bit of comment, is the proposed tentative on daily and possession limits. We received a substantial number of comments from folks opposing our clarification of language prohibiting high grading or culling of fish, and claiming it was unenforceable and not necessary. Approximately 45% of the folks responding opposed the language clarification. The remaining 54% supported it. One of the things we got in those comment letters from people opposed to this is when folks were catching walleye. (Most all of this was from walleye anglers.) When they brought the fish into the boat and it didn't look so good, they put it in the live well, revived it and then placed it back in the water. They felt they were doing a beneficial thing and were helping walleye. Also had a few people disagree with the proposal to keep sauger and walleye whole until they are off the water and done fishing. Some folks would like to be able to fillet their fish on the water and dispose of the remains in the lake.

Our proposal then on the high grading/culling issue is to leave the language as it is currently written in the regulations, and drop the proposed tentative change. During the next couple of years we're going to provide additional information to the public concerning some of the issues associated with this. I included in your packet a short memo that reviews three scientific papers that have been done on the delayed mortality of walleye at tournaments. The amount of delay of mortality varies, but in all of these cases the researchers took fish after the tournament was over where the fish had been held in live wells, and then weighed them. The researchers took those fish, put them in large nets for five days and counted the mortality. It ranged from 24 and 75% delayed mortality. The reason I mention that is because a lot of the folks opposed to this regulation felt they were helping these fish by putting them in the live well and then reviving them. According to the research, that time spent in the live well, because of the higher water temperature, oxygen concentrations, crowding and other things, is probably having a negative effect on those fish. Although we're recommending dropping this proposed tentative, we do want to try and get this information out to anglers who think they're doing the best thing for the fish, where, in fact, it may not be the best thing for them.

For the last one on the standard regulations, the proposal was to open all catch-and-release fisheries to harvest by kids 14 years and under. Again, both anglers and fisheries biologists felt that many waters that had catch-and-release regulations benefited from those regulations. Also, there are a number of waters in the state where kids can harvest fish, and it is not necessary at this point to do a blanket exception for kids 14 years and under. Our recommendation is to delete the proposed language in the tentative and, as we do with bait, consider each water individually.

That takes care of all the statewide issues. At this point I would ask you to adopt the tentatives as they are now, with our recommended changes.

**Walker** - I have a question about your response on the last section that we discussed. Under "Response," the last sentence was "At this time, no changes in existing catch and release regulations are proposed." That is technically incorrect, because you are going to change the Yellowstone.

**Hunter** - For bait, but not as far as catch-and release. We'll have to do something with that language to make it clear. We need to recognize that change through Columbus.

**Murphy** - Do we know if crayfish carry whirling disease? Is that a known?

**Larry Peterman**, Chief of Operations (former Fisheries Division Administrator) - There are no direct studies that demonstrate crayfish will be infected with whirling disease. The concern is that the crayfish will ingest the spores of whirling disease, pass the spores through their digestive system, and then in that form will move to different bodies of water. Until further studies can identify that and, considering the significant impacts that occur when whirling disease is transferred from one body of water to another, we've taken a conservative approach. This is based on their feeding habits and the likelihood that they will pick up the spore form and pass the spore form to different bodies of water. The spores are very resistant and will pass through birds untouched. We're concerned that crayfish are another vector for moving the spore form.

**Murphy** - Has crayfish analysis been done to determine if they've found any of those spores?

**Peterman** - We have not done that analysis.

***ACTION:** Mulligan - I move approval of the statewide regulations as amended by the department. Walker seconded. I will then open this up for public comment.*

I'm **Bill Holdorf** from Butte and have a question. On the front page under "game fish," it lists cisco. How is cisco considered a game fish? They're used for food for other fish and there's no limit to catching them. I would like that clarified.

**Hunter** - I don't know the answer. It may be in the statute.

**Mulligan** - We don't have the authority to change that.

**Mike Sedlock**, Region 5 Director for Walleyes Unlimited - We are fully supportive of not changing the possession limits language as was originally proposed and we support the decision.

**Curtis Spindler**, MT Bass Federation - We don't mind not changing it. It says "Any fish . . . not immediately released to the water shall be considered in possession." In our tournaments we don't immediately release them. If we catch a larger fish, we release it later. Basically, it is still saying the same thing that if you don't immediately release your fish, it's considered taken. If we culled four fish and put four new ones in, that means we caught nine fish that day. It conflicts because it says where catch and release is allowed, fish released alive are considered not taken. We are doing catch and release. The term "immediate" conflicts. I can see leaving it the way it is, but under tournament rules, which I talked to Karen about and which will be addressed later, we would have to address that issue. As it stands, we could have been breaking the law all along in our tournaments. We'd like to get this clarified so we know what it is. We are doing catch and release, but we're not sending them back immediately.

**Dascher** - When are you releasing?

**Spindler** - We start fishing anywhere from 6:00 to 7:00 in the morning and weigh-in is in the afternoon. During that period, if one in your live well is smaller, it gets sent back and the larger one gets put in. That was the whole issue with the no culling or high grading. We do high grade in our tournaments. We don't have any tournaments until May, but I'd like to make sure this gets clarified. It has never been an issue before, but it could be interpreted that up until now, we haven't been following the law.

**Dascher** - If the only time you have a problem with this is during the tournaments, then it would be handled the same as for walleye under the tournament specifications. **Spindler** said that as he understood it, there is nothing in there right now about that. From what Karen told him, it is not addressed in the state tournament rules. **Dascher** asked if it could be addressed in the tournament rules. **Spindler** said they could and that would take it out of this. They are not necessarily opposed to the "no culling" because none of them really do that except in their tournaments. He said he thought they might be getting singled out because of some problems with tournaments. Nobody could really give them a reason why it was going to change. He said they'd like to see bass separated from walleyes and trout. It's a different type of fish. The department gave him a study that was done on bass on culling and catch and release. It was done on Lake Fork in Texas and it's quite a bit different than here. The water temperatures there are a lot higher. This study was done where the water temperature was somewhere in the 80° range. Don't get that in Montana. At that point the oxygen levels do start dropping. It's not apples to apples. They feel their tournaments were singled out, and the walleye guys because of a bad experience at Fort Peck a couple of years ago. **Dascher** asked if it was taken care of by not singling the bass or the walleye folks out and they said "all tournaments," would that take care of it? **Spindler** said that would be fine with them. By doing nothing as it reads, it could be interpreted that they are not following the rules by not immediately releasing; it becomes part of the daily limit. **Dascher** asked if it would apply to the walleye guys and that would apply to everyone. **Spindler** responded with "anybody."

**Dascher** - We're making this exception as the department sanctions tournaments. The tournament rules would then take place for your tournaments, and you would be allowed to do that. **Spindler** said "Exactly, and that's what I'm saying." As it sits, there is no provision in the tournament rules and they would like to make sure something is done in tournament rules so this issue is addressed. They want to comply with the laws.

**Dascher** asked Chris Hunter if they could take care of that. **Hunter** said "yes, it will be."

**Walker** - So we did get an affirmative on that?

**Dascher** - Yes, Chris said they would take care of that under the tournament rules.

**Tim Johnston** - Thanked Jim Vashro and Pat Sample. I am acting as the tournament director this year. Pretty much what Curtis said is what we need to work from. I really don't have any guidance right now to do these derbies. That becomes problematic because a couple of months ago we had a meeting regarding how we're going to pick the lakes for our tournaments for the year. Right now they're all in Idaho until we find out exactly how the wording will go on this.

We had a national tournament at Flaming Gorge in Wyoming. In that tournament they had a no-cull rule and it was a disaster. We were done fishing at 6:45 in the morning, because after you catch five, you're done. To not be able to cull fish and to not be able to upgrade a limit, which is part of tournament fishing, kind of becomes a mute point if you're catching five in the morning and you're done for the rest of the day. Just looking for some sort of guidance. My question to all of you today is when does that wording come out and when do we receive that information from you?

**Karen Zackheim**, FWP Management Bureau Chief - We haven't established a schedule yet. Will bring it to the Commission as a tentative rule in December or January. It would probably take about two months. **Walker** said it would be finished in February and asked if that would work. **Johnston** said "yes."

**Tim McAlpine**, President-Elect, Helena Chapter, Walleyes Unlimited - I have a quick comment on behalf of non-tournament fishermen. When you're out fishing all day and ready to call it a day, sometimes you haven't accomplished your goal of enough fish for dinner. You might have a fish that just doesn't meet your goals. You need to let it go, you don't want to put it in the freezer and you don't want to kill it. A lot of times you're out on the lake having some luck, meeting your goals and bringing home dinner. I fish most of the time at Canyon Ferry and most fish out there are big fish. I don't like eating big, old fish. When I catch a 12-14" fish, that's more suited to what I want to consume. I'd like to let that bigger fish go and keep the smaller fish for my dinner. Your delayed mortality data was interesting, but sportsmen don't release their fish into a net. We put our fish back into their native habitat and they're gone. At the end of the day, if I haven't met my goals for what I want to take home for dinner, I let my fish go that are in my live well. They're in good shape. The live wells maintain circulation plus they have air infiltrators. If you've taken care of your fish, which most of us do, they're in great shape.

**ACTION:** *Walker - I believe that concludes the comments. We have a motion and second. Asked for a vote. Motion passed.*

**Hunter** - To start off with the Western District, I have to give you a replacement page. It's page #4 in the yellow section. The proposed tentative here was on cutthroat trout limits. In general, we had real good support on the proposed limits. There was a little bit of confusion because there was talk about keeping the cutthroat limit separate from the combined trout limit. When we prepared the page I just asked you to replace, we inadvertently would have increased the limit from five to eight fish. What we've done is merely change the wording so that the limit stays the same. Standard limit is five fish, three of which may be cutthroat.

The other thing we've done there, which is based on a comment from the Flathead Chapter of Trout Unlimited, is take out the standard limit for tiger muskie. There are no tiger muskie in the district and there's no reason to have a limit on them. If sometime in the future tiger muskies are introduced, we can have a specific limit for that body of water.

The next item is the Bitterroot River. On a number of waters in the tentatives, we recommended eliminating the use of aquatic insects as bait during the extended winter whitefish season. On most of those waters, we got very little opposition. But on the Bitterroot, we got significant



opposition. As it says here, only 10% of those providing comments on the statewide survey opposed this regulation change. However, 84% of the comments received in Region 2 opposed this change. The biologist in that area is comfortable with maintaining the aquatic insects as bait during extended whitefish season, and so we would recommend deleting the restriction on the use of aquatic insects as bait from the tentative regulation specifically for the Bitterroot River.

The next one is the Clark Fork. Again, it was the same issue. In this case, only 5% were opposed to removing the bait restriction. So we are suggesting no change in that tentative.

On Flathead Lake, most of the comments here were largely due to a point of confusion. The tentatives show eliminating the limits on bass, whitefish and perch. All that does is revert to the standard limit for the district. Most of the opposition thought they wouldn't be able to fish for those fish in Flathead Lake. That's not the case. Our recommendation here is no change to the tentative.

Regarding this particular regulation, we are co-managers of Flathead Lake with the Confederated Salish and Kootenai Tribes. We work together to make sure their regulations and our regulations are the same on the lake. Sometimes it is hard to coordinate these two processes. The tribes are one week behind us right now on this. If you adopt this tentative as the final rule and the tribes go ahead and do the same thing, then we're done. If they have a change, then we'll have to bring something back to you to look at. Jim told me yesterday that the public comment the tribes have received so far are in favor of the same thing we have. It's not likely we'll end up in that situation, but I wanted you to be aware of it.

The next one is the Flathead River and sloughs. This was a proposal we prepared to close Flathead River from the Stillwater River to the lake to fishing during the winter, and we would also close Brenneman Slough during the winter. The issue here is related to bull trout and pike. We have been concerned about angler bi-catch of bull trout. So we have recommended that we close that stretch of the river entirely. There's another issue here, and again I have to give you a replacement page for #9 of the tentatives. On the Flathead River stream we had proposed the standard, which is 5 rainbow, one over 14 inches. In response to some comment, we have taken off the one over 14 inches. That is what that replacement page shows you. Our recommendation is to close that stretch of the river from the Stillwater to Flathead Lake to fishing in the winter, and remove the one over 14" restriction. Is that clear?

**Mulligan** - It looks like what the change does in the wording is a combined trout limit, five daily, two rainbow trout, which has been scratched out on the previous page, and now it says "Combined trout limit, five daily" with the two rainbow scratched out. **Hunter** said that is right. **Dascher** asked, "Where's the 14" one?" **Hunter** responded that the 14" reverts back to the standard limit.

**Jim Vashro**, Region 1 Fisheries Manager - The concern is we're trying to reduce rainbows in that section of the river and under that limit occasionally anglers might have to turn a rainbow trout loose. By going with the standard five-fish limit, they will basically be able to keep every rainbow they catch.

**Hunter** - The next one is the Middle Fork of the Flathead River. Comments received here were in opposition. They ranged from concern for increasing the limit for rainbow trout as well as opposition to eliminating the use of aquatic insects during the winter whitefish season. We even had a few opposed to having an extended winter season, but there was very little opposition here. It was only 10%. We recommend going with the tentative.

Rock Creek is an interesting one. The tentative was removing aquatic insects during extended whitefish winter season. Most of the comments we got were related to other issues that shouldn't be addressed during the regulation setting. It's ranchers in the area who want to see the trout season closed during the winter, although there is some bait fishing for whitefish, which they feel would be acceptable. This is something where the region will have to work with those landowners over a period of time to try and reach some resolution. I don't know the history on this, but I think the regulations there were worked out with the landowners. There are some concerns about that, and it's something we'll have to work on.

The last one is the Thompson River. Most of the opposition to this was centered on limiting the age of kids who could use bait to 12 rather than raising it to 14, which is what the tentative does. Only about 10% of those were opposed to changing the age to 14. Our recommendation is to leave the tentative as it is.

That concludes the Western District. I would ask for a motion to adopt those tentatives.

**Murphy** - I have one concern with regard to the issue of potential closure of the 20-mile stretch from the lake up. After talking to Dan and Jim considerably about this, my concern goes both ways as far as closure and more access. In looking at available data, which is a two-year window of information, and looking at statistics of what is happening with bull trout, it looks like we're seeing some increase in population, which is good. Dealing with endangered, threatened issues, that's a very important element of what we're trying to accomplish here. With the concerns both ways regarding this issue, I feel maybe it's not enough information to make a decision at this point. I would recommend an amendment to this which states that the regulation pertaining to that stretch from the lake up to Brenneman Slough be left as it is. This is at the top of page 5. In addition to that, there should be a caveat that there be the continuation of the data collection that's been done over the last couple of years to give us a better indication of what is happening with bi-catch and other issues associated with pike, and how that's impacting the bull trout. From that standpoint, then two years from now or whatever it is, we would have enough information to make a better determination as to whether or not the impact is there.

**ACTION:** *Murphy - I move to amend back to the current situation with regards to that particular issue.*

**Mulligan** - For clarification, are you including Brenneman Slough?

**Murphy** - Yes.

**ACTION:** *Mulligan - I'll second it so we can discuss it.*

**Mulligan** - Does the Federal service have similar concerns?

**Hunter** - We had a letter from U.S. Fish and Wildlife Service and they were supportive of the tentative, although they expressed some similar concerns.

I think that's the only motion we have right now. We don't have one to adopt the tentatives for the Western District. So the only motion we have is this one.

**Vashro** - In terms of the river closures, it has been difficult for us. There are no clear answers on river closures. Under the existing system on the river, we are seeing increases in bull trout. So it appears that we are meeting our goals there. The proposal from Trout Unlimited was to open the river to increased fishing. We were very concerned that putting additional fishing on the system would probably cause a lot of mortality to bull trout. The more we looked at it, there seemed to be some rationale to go the opposite direction and close it because of problems with bi-catch, poaching and other things with the bull trout. Under the existing system, bull trout are still heading in the right direction, which is upwards. We can all benefit from more data on the system. Holding the status, which is leaving the river open to the harvest of whitefish and lake trout, catch and release for other species, would allow fishing to continue. We'll try very hard to get a creel survey on the river over the next two years and it would let us do both - more research on the interactions between the fish species and see more of what anglers are doing to that section. I see no harm in going this direction.

Brenneman Slough is a little different situation. It has a very strong spring source. It's warm water and it's open, so it's pulling cutthroat and bull trout in during the wintertime. It's also pulling in anglers because it's the only open water we have. We have a concentration of anglers. They are catching northern pike. Two years ago when we went through the regulations, we looked very hard at closing Brenneman without all these other discussions. Didn't come up with a resolution. Brenneman is very atypical for the rest of the Flathead System. The warm flow is pulling in a lot of salmonids. We have documented problems with bull trout mortality. They are taking out limits of cutthroat, which wasn't really intended. There's a pretty severe landowner and access problem there, too. The closure would solve a lot of those problems from our standpoint. I suggest going ahead with the closure. Brenneman Slough would be appropriate and it's a very small part of this entire system. That would leave the rest of the system open to more research and creel surveys.

**Murphy** - Is there anybody here with a thought about Brenneman Slough compared to the overall system?

**John Wilson**, Montana Trout Unlimited - We also have John Winnie here from our Flathead Chapter. On the surface, the closure of Brenneman seems appropriate, as Jim Vashro has said.

**John Winnie**, Flathead Valley Chapter, Trout Unlimited - Our concern has been on the predation side of this issue. The main concern of the department has been on bi-catch and concern that anglers on the river would kill more bull trout than would be saved by harvesting pike. In Brenneman, one of the problems is the pike predation issue. Brenneman is attracting bull trout during the winter season and attracting cutthroat in large numbers. We have the data

on that. It's also attracting pike in large numbers and there are pike spawning in the input streams to Brenneman. Brenneman is an area of heavy pike concentration, and we get heavy pike predation in Brenneman on bull trout and cutthroat. Our approach is to harvest those pike out and pay the cost of the bi-catch. The cost is small compared to the benefits of the harvest. We would not be inclined to have Brenneman closed during the winter. We would like Brenneman open along with the rest of the river so that you can put some pressure on these fish.

**Murphy** - Would like to see it remain open as it is at the current time so we can get this additional two years of data. By leaving as it is, everything will be at status quo from the standpoint of past data and comparing that to the future data. I'd like to leave my motion as presented. **Mulligan** asked if we have any data that shows we're seeing a higher level of bi-catch impact on the bull trout of Brenneman compared to the river.

**Vashro** - We don't. What we have are warden contacts with anglers relating to nature of it. The problem is the sloughs are very separate from the river system. They function much like a lake. They have a different fish community and a different angling type. Generally it has not been a problem. Brenneman is very atypical because of the strong spring flow. That tends to pull a lot of salmonids in. Since it is separate from the river system, it is open to the harvest of cutthroat and to the use of bait. Those are the kinds of problems we were trying to solve without going to a lot of exceptions. A closure takes care of the bait and harvest of cutthroat issues pretty cleanly. We have anglers accessing it who are interesting. The wardens are writing a bunch of tickets. They've observed dead bull trout floating around with steel leaders hanging out of them. We have a pretty severe problem. The landowner is blocking access, he is dropping trees, and he's moving rocks in. The closure took care of a lot of problems. It leaves a few pike unharvested. When the system opens for the general season, the pike are still there, anglers can come in by boat, and they can go after pike with the 15-fish limit. If you leave it open, you will have to close it to harvest of cutthroat, close it to use of bait, and pike fishermen will probably not go there much under those restrictions. This is not an easy issue.

**Mulligan** - Chris, did the Feds make any differentiation on Brenneman and the bait issue? **Hunter** said not that he remembered. He didn't think they specifically mentioned Brenneman or the use of bait. **Vashro** said they didn't look at Brenneman at all. He had the letter if they wanted to read it. **Walker** asked if they had a motion.

**Murphy** - The motion would be to leave that particular 20-mile stretch of the river between the lake and Stillwater closed during the winter. Under the tentative, it would be left as is, and open to whitefish and lake trout catch.

**Mulligan** - If we wanted to limit the bait and the harvest of cutthroat, could we do that under a separate motion? **Murphy** said "yes." **Dascher** asked if Brenneman Slough would be closed. **Mulligan** responded that it would be open.

**ACTION:** *Walker* - So we're going to deal with this motion and then I sense we'll have a separate motion. All those in favor of the motion before us by Commissioner Murphy signify by saying "Yes." **Motion carried.** Are there further amendments?

**Mulligan** - I do have some concerns on bi-catch and particularly using bait. **Murphy** said he had the same concerns about the bi-catch, but was also interested in looking at a longer-term data collection. Understood the concerns about bi-catch and illegal fishing, but wanted to find out if we are headed in the right direction with bull trout and cutthroat. Would give us a constant situation to determine if, in fact, we are seeing that kind of data. **Commissioner Lane** said he agreed with what **Commissioner Murphy** said. **Commissioner Dascher** asked if there was anything that could be done with the landowner to try and ease some of this problem.

**Vashro** - Our Enforcement Division is working with the landowner. It's unfortunate as we've had a good relationship with him in the past. Waterfowl hunting kind of touched things off and, unfortunately, stream access law enters into this. Trying to come to a common understanding of the public's rights to move in and out of the system. Beyond that, once we've established the stream corridor where the public can move in and out, I think we'll get cooperation with the landowner to post the boundaries very clearly and deal with his other issues as best we can.

**Walker** - With that, I think we've completed any thoughts on amendments to this section. Could I have a motion?

***ACTION:** **Murphy** - Move approval of those tentatives for the Western District, as amended. **Mulligan** seconded. **Walker** opened for public comment.*

**John Winnie**, Flathead Valley Trout Unlimited - As I said earlier, we're seriously concerned with the predation side of the equation here. We feel the bi-catch issue has been highly overrated. We've done some calculations and looked at hooking mortality. We have some data. Commissioner Murphy is quite correct in that we don't have enough information to make firm decisions. It's the best we have and, as far as they can tell, harvesting pike results in a bi-catch mortality rate of about 3 bull trout per 100 pike harvested. You might think that's quite a lot, but on the benefit side these pike are consuming bull trout at a certain rate. That rate is increasing. If the data is correct, in the 2000 data we saw pike consuming bull trout by about 2 per 100 pike. In the 2001 data it is up to 18 per 100 pike. One could say the sample is small and this is just a fluke. But we can't afford to ignore this. We could be in a situation where pike are eating out the sloughs, moving more into the main river and concentrating more on bull trout. In the 2000 data, something like 10% of the total biomass of the pike was bull trout. In the 2001 data, we're getting over 80% of the biomass consumed by pike as bull trout. These are not good signs on the predation side of the equation. I agree that we need more information on this. If we close the river and don't open it to pike fishing, then we won't get information from creel surveys on pike fishing, which will give us information on bi-catch, pike consumption and estimates on changes in population from catch per unit effort. Given the options available to us, I think Commissioner Murphy's proposal is a better one than the Region 1 proposal. We need some solid data and suggest FWP conduct an aggressive investigation of the situation. We were told four years ago that pike stay in the sloughs and you don't have to worry about them being in the river. So there's no need to open up the river to harvest for pike. The data has come in and the pike are indeed in the river. The pike anglers specially licensed to harvest them are coming in with large catches of pike. We're seeing bull trout and cutthroat in those pike stomachs. The question is how to balance the predation against the bi-catch problems. The bi-catch is mitigated seriously by the fact we have low temperatures there about this time. This seriously cuts down on hooking

mortality in all species. We need much more information about this, and I would instruct the Commission to urge FWP to conduct an aggressive research program. Jim Vashro has talked about enforcement problems, which we've heard about for four or five years. We still have just one warden assigned to that lower river area. We think the Flathead Lake Management Plan has some flaws, but one of the things it puts its finger on is that the best way to compromise a restoration program is by illegal taking. In that plan it explicitly states there must be increased enforcement on the lake and on the river to make the plan go. Would also urge the Commission to recommend to FWP that they initiate a more aggressive campaign for enforcement on the river. Finally, the restoration project, particularly with respect to cutthroat and bull trout, has been compromised by identification problems. Need a more aggressive campaign so that four years from now there's no excuse for anglers being unable to tell a rainbow from a cutthroat, and no excuse for anglers unable to tell a lake trout from a bull trout. With those qualifications, will support Commissioner Murphy's proposal.

**Lane** - Jim, what is the width of slough at its confluence with the river? **Vashro** responded that section of river fluctuates 10 feet due to the influence of Kerr Dam, but the average width of the channel going in would be about 30-40 ft. at full pool. On Fennon Slough it might extend out to 120 ft. It's a pretty definable entrance in and out of the slough. **Lane** said he asked that because he was curious about the possibility of setting up a barrier to create a safe haven for the trout species we're trying to save and keeping pike out. Is that something we can look at for a future fisheries project? **Vashro** said they could look at it but was afraid there might be problems. Anglers use the river to move up and down the river to access the sloughs. Any barrier put in would have to be passable for boats. Also, beaver and muskrats love the kind of things they put out and their traps get chewed up. They see a fluid movement of fish in and out of the slough. Will look at it over the next two years, but logistically it will be hard to keep in place. There's a lot of debris and other things moving in and out so holding barriers is difficult. Probably better off manipulating the populations themselves rather than trying to hold them in one place.

**Hunter** - We're at the point where you need to take action on your motion.

**ACTION:** *Walker* - We need to vote on this motion as amended. All in favor signify by saying "aye." **Motion passed.**

**Mulligan** - We've defined bull trout tighter so there can be proper identification. We're adding a definition for sauger to clarify that. Is there any need to clarify the definition of a cutthroat so if it has a slash and regardless of anything else, we turn it loose? Do we have a problem with misidentification? I can't find in here where we define cutthroat any tighter than with the picture. **Hunter** said they had a fair amount of discussion on this subject as far as defining westslope cutthroat in the regulations. **Zackheim** said they had that discussion and it's very difficult to resolve because they find rainbow trout with orange slashes. It comes down to enforcement in areas based on what kinds of fish are found in that area. In most places, if the fish has a slash, it should be put back. But there are some lakes and reservoirs where it is okay to harvest those fish with slashes.

**Hunter** - Now we'll move to the Central District and Canyon Ferry Reservoir: The tentative proposal was to allow a limit of 1 walleye over 28 inches and we had some comment at the

public meetings. This tentative came in late so it wasn't in the orange book. The only place we received comments was at the public meetings held in the region. Opposition was about 56% to that regulation. There's no tentative associated with this, but we did get a lot of comments on the limit at Canyon Ferry. A number of people would like to see the walleye limit at Canyon Ferry reduced from the 20 it is now to 5 fish/day. In the development of the Upper Missouri River Fishery Management Plan, which included Hauser, Holter and Canyon Ferry, there was clear direction from the public that we were supposed to attempt to manage for a multi-species fishery - perch, walleye, and trout. Goals were established for each of those species. The walleye goal was a 3-year running average in our gill nets of between 5 and 10 walleye per net. Our current average over the past 3 years is 5.8 so we are within the goal. According to the plan, as long as we are within the goal, there should be no change in that regulation.

**Walker** - Which way is it trending?

**Hunter** - This year it was up. It was 7.4 this year. The perch and trout are lower just for this year, but in the 3-year running average still okay. Our recommendation on this is no change to the tentative.

Missouri River: This one has been somewhat complicated and controversial. Our original proposal was for catch and release from Holter to the Dearborn. That was based upon concerns about whirling disease and the fact we had seen very little recruitment in the last two years. It's sort of a matter of time before that fishery will be seriously compromised. I believe at the September meeting there was a motion to change that so there would be harvest from Holter Dam to Wolf Creek. We looked at that and thought a simpler regulation to enforce and one we have recommended is one rainbow from Holter Dam to the Dearborn. Within the last week we received data that was collected this fall and have done analysis on fish populations. What we have found is we have a third year of very poor reproduction, but the adult population catchables are as high or perhaps a little higher than they were last year. So we still have a very good population of over 4,000 per mile of catchables in that stretch. Based on that, we are recommending leaving the regulation as it is currently. We know this population is going to be seriously affected in the next couple of years. We'll be watching that carefully. I think the feeling from Steve Leathe, the Fish Manager there, and George Liknes, the biologist, is that the population is adequate to maintain the fishery for the next couple of years. If it turns out the data next year looks pretty bad, we might have to come back in the off year. Our recommendation at this point is to go with the current regulation there.

Smith River: Approximately 13% of those responding did not favor the increase to age 14 for a special kid's regulation to allow the use of bait. Most felt that kids do not need to use bait and that it should remain 12 and under. We're going to stay with our recommended tentative.

Yellowstone: Very little opposition to the tentative. This is what we discussed earlier with cutthroat on that section on to Columbus.

That is the Central District and as this point I would ask for a motion to adopt the tentatives as proposed.

**Mulligan** - There is another issue that is not on the yellow sheet here, which pertains to the Beaverhead and the Jefferson Rivers. As you look at the Beaverhead, the tentatives went out with recommendation to drop the combined trout limit to 3 daily, only 1 over 18" and only 1 may be a rainbow from Clark Canyon Dam to Anderson Lane. On the Jefferson, it is to go with the 3-fish limit for the entire length of the Jefferson. Actually, Red Rock is also changing from the 5 to the 3. The change was proposed based on the drought situation. It's a proposed temporary change to allow the fish to rebound. They will be even more severely impacted by the drought in those stretches this coming year, particularly with Clark Canyon being as low as it is. There was some public comment with concern about why we are leaving the lower stretch of the Beaverhead out of that change, inconsistency on regulations and potential impact on the trout when staying at a 5-fish limit. What it boils down to is that we made a commitment in our grayling introduction program to the Feds that we are doing an experimental reintroduction in several areas, one the lower Beaverhead, one at the lower Jefferson, Headwaters of the Missouri, and the Gallatin. Depending on how those go, we would do a potential reintroduction on the upper Madison. As part of that reintroduction plan, we had committed to the Federal Service that we would not change the trout limits in those sections where we are reintroducing the grayling. The area where we want to stay with five fish on the Beaverhead is the stretch where we put in those five grayling, which is the reason why we don't want to change that from five to three. We also reintroduced on the lower Jefferson from Willow Creek Bridge down. We did not flag that one. It needs to be flagged if we're going to stay in alignment with what we've told the Federal Service on the grayling reintroduction, and also leave it at the five-fish limit to stay consistent.

We have a couple of options. We could change that lower section of the Jefferson to remain at five to be consistent with what we've told the Federal government, or we could change the whole thing to three. This is an experimental introduction. We've not run it by the Feds as to what they would do or say if, in fact, we did change those limits after stating in the plan that we wouldn't. The bottom line is, particularly on the lower Beaverhead, my understanding is that biologically there really is not going to be a real impact on the trout whether it's a three fish or five fish limit. It's an issue with the Federal government. In summary, do we take our chances with the Federal government or do we go ahead with our commitment on this grayling reintroduction and maybe take a little flak from the public that we are manipulating trout populations to try to promote the grayling reintroduction. It would be my preference to change the lower Jefferson by leaving it at a five-fish limit to stay consistent with what we told the Federal government.

**Mulligan** - I'm not as clear on the lower Jefferson of what that means for the trout population. It does not get near the pressure of the upper Jefferson on fishing and does not have near the trout population. It is fairly recruitment limited. Ron Spoon, the biologist, fully supports leaving that section at the five-fish limit. Dick Oswald, the biologist in Dillon, wants us to leave that five-fish limit for the lower Beaverhead.

**ACTION:** *Mulligan moved to amend the proposed tentative to leave the limit at 5 fish, only 1 over 18" and catch and release on the rainbows, as currently listed in the regulations, for the Jefferson from the mouth of Willow Creek down to the confluence with the Missouri. Walker seconded.*



**Hagener** - I would add that because of the Federal commitment, if we have continued drought conditions we should have discussions with the U.S. Fish and Wildlife Service to see if there is an avenue where we can do something different because of unforeseen circumstances. **Mulligan** said if the public gets the perception we are trying to manipulate trout populations doing grayling introductions, we should talk about it because that will not help our program. That was not the intent at all from the start. **Walker** said whether we are or not, we're not going to do it midstream. Is there any public comment?

**John Wilson**, Montana Trout Unlimited - Commissioner Mulligan did a great job explaining the problem. Trout Unlimited, together with the department, is investing hundreds of thousands of dollars in the Jefferson to try and get it back to the levels that it has been in the past. A concern once the habitat and water conditions improve is having a stock of wild fish available to repopulate the river. Our concern is maintaining a minimal stock of trout in the Jefferson while this rehabilitation is going on. If the brown trout and the rainbow don't make it, it's likely the grayling probably won't make it either. I can't oppose what you're saying, Tim, but I'd like to put some dimension to it that says everything we can do to protect the brown trout stock while the rehabilitation is going on is very important.

**ACTION:** ***Walker** - Further comment? We have a motion and a second regarding the lower stretch of the Jefferson River. All in favor signify by saying "aye."* **Motion carried.**

**Hunter** - We still need a motion for the rest of the Central District.

**Murphy** - Chris, I have a question on the Missouri issue. It looks like the recommendation is to make it a one-fish catch on rainbow.

**Hunter** - No. When we prepared this a couple of weeks ago that was our recommendation. Subsequently, we've gotten this fall's population estimates back and have changed the recommendation to stay with the current regulation.

**Mulligan** - I have a question of the Walleye Unlimited people. I had proposed the one over 28" trophy limit on the walleye for Canyon Ferry. In fact, we do not have a lot of large fish and we do not have a problem with predation given the numbers. The counts show that. It's a worthwhile thing to do for the walleye, but we had a lot of public opposition to that from the concept that walleye was illegally introduced and so FWP shouldn't be managing for trophy walleye, which gives credence to an illegally introduced species. I understand that feeling, but I also feel as a department and the Commission we should get past that, and manage them for an optimum fishery. That is also why I support leaving it at the 20-fish limit because I think that is the right thing to do for the optimum fishery. The perplexing thing to me is we didn't get any support from the Walleyes Unlimited. Do they not support the 1 walleye over 28" trophy fish?

**Sedlock** - I talked to the other two chapters in Region 5 and also all of the directors at the state meeting in September. They all do support the 28" restriction. But they also support lowering the walleye limit in Canyon Ferry; 5 may not be the right number, but 20 is not felt to be the correct number either.

**Mulligan** - I understand that. If we don't lower the limit, do you not want the one over 28"? I'm confused here. I don't want to go forward and propose the one over 28" if it isn't something the walleye fishermen think is a good thing to do.

**Sedlock** - From the walleye fishermen's point of view, any time you can conserve on fish and maintain some type of trophy fish, it's acceptable and they're in favor of it.

**ACTION:** ***Mulligan** - Given that, I move to approve the Central District fishing regulation finals, as amended for the Jefferson. **Lane** seconded. **Walker** asked for comment.*

**John Wilson** - I think the process on the Missouri River was a good one. You opened it up to public meetings and probably got more comments than you needed. The data that Steve Leathe collected shows that adult rainbow trout in that stretch of the Missouri River had not declined the way they predicted. More important, the data also shows the whirling disease problem has not gone away and has actually worsened. The whirling disease time bomb is ticking on the Missouri River. The biological evidence for impending decline of rainbow from whirling disease in that section of the Missouri River is irrefutable. As a result, 266 were in favor of putting that stretch into catch and release where only 172 were opposed. More significant is that American Fisheries Society, the Montana Chapter, supported going to catch and release from the dam to the Dearborn. Governor Racicot's Whirling Disease Task Force made a recommendation directly to this commission that you should go to catch and release. The Whirling Disease Foundation made the same recommendation in those comments. We continue to urge you to be proactive and preemptive in long-term protection of this whirling disease impacted, world-class trout fishery. We recommend you do have catch and release from Holter Dam to the Dearborn for those reasons.

**Arnie Gidlow**, Missouri River Foundation - This is a foundation of people from all over the world with 30% of their members coming from Montana. They are concerned about the health of the Missouri River rainbow population in the upper 20 miles of the river below Holter Dam. Low numbers of juvenile rainbow, very high infectivity rates in the primary spawning tributary of Little Prickly Pear Creek and several low water years are stressing the upper Missouri River. They believe a catch and release regulation from the Dearborn River to Holter Dam is in the best interests of one of the best wild trout rainbow fisheries in the world. Montana's wild trout management philosophy has been tremendously successful in creating one of the world's best trout fisheries. Angling mortality plus natural mortality will be offset by natural reproduction. With a low reproductive capability with the presence of whirling disease, angling mortality must be reduced or the population will decline very rapidly. The evidence is overwhelming that whirling disease is impacting the reproduction of rainbows in the upper Missouri. Mature Missouri rainbows must be preserved to maintain a good reproductive stock for the river to naturally combat whirling disease. Catch and release regulations will protect spawning rainbow aged fish and provide a reasonable resource that may be appreciated and enjoyed repeatedly by anglers. Now is the time to react to this crisis. Failure to act now will lead to the destruction of one of the best rainbow fisheries in the world. It is their sincere hope that catch and release regulations will be instituted by the Montana Fish and Game Commission and endorsed by the Montana Fish and Game Department. This regulation doesn't stop any person from fishing the Missouri River. Unfortunately, this issue has crossed over biological lines and now is a social

issue. I hope the Fish and Game Commission will consider the best science about what is happening to the river, and what is best for the resource today and in the future.

**Sedlock** - Passed out his comments with a chart. Said the information is derived from the department's database. They have two concerns on current management plans. In 1999, stood before this commission and testified that Walleyes Unlimited did not agree with 20-fish walleye daily limit. That was consistent with what over 90% of the anglers responding to the public survey wanted. Also predicted the 20-fish limit would draw excessive angling pressure to Canyon Ferry, which would severely the other fisheries, especially perch. Walleye and perch cohabit the same areas of lake and hit the same bait. When people are fishing for walleye, the bi-catch rate on perch, they believe, is phenomenal. They don't feel the creel census and data being collected have been aggressive enough. We understand it's a resource problem, but because it is in the plan it should be taken care of. Angler fishing days have increased on Canyon Ferry Reservoir by 20,000 fishing days/year. That is being directly drawn because of the 20-fish limit on walleye. Young-of-the-year perch recruitment has remained strong. That is good because perch are what all of the rest of the fish in that reservoir are predated upon. (Those are the four-inch and smaller fish.) The adult perch populations have dropped between 1999 and 2001. Those are the six inches or longer fish. They are the spawning age fish and are the ones harvested by anglers. Walleye do not predate on anything over four inches long. Stomach samples prove that.

They are also concerned that rainbow trout have declined in that time and biologists have no explanation why the numbers have dropped. The walleye population has stayed in the 5-10 fish range over the 3-year running average plan. This was even before the 20-fish limit was imposed. Because the numbers of walleye have not increased in all of these years, it is not feasible to blame walleye for the drop in trout and perch numbers because they are not predated on those size fish anyway. The decline in the adult perch is what really concerns them because the key to maintaining a good multi-species fishery is perch. In the mid-1990s, between 150 and 300 walleye were gill netted in the spring on the spawning beds on the south end of the reservoir. In the years since then, Walleyes Unlimited and the department have closely monitored these fish. Over the years, the numbers of walleye have steadily declined down to less than 30 walleye caught this spring in nets. In addition, the average size of the spawning walleye has declined. They compared numbers caught from 1999 and 2000 in their walleye derby and their statistics show it took much longer to catch one walleye in 2001 than in 1999.

Their statistics indicate walleye populations and catch rates are declining, but FWP is not taking this into consideration. Instead the department is using their creel surveys and net surveys. Other states use the Walleyes Unlimited data very extensively.

They hope sound biology is used to make management decisions on walleye. They appreciate that two years ago the Commission was concerned about managing for walleye in Canyon Ferry Reservoir. We have two more years of data to support that walleye are steadily declining and the perch population is being over-harvested by anglers because of bi-catch. They also feel FWP needs to work harder on constraints and regulations within the management plan. There should be documented evidence that the declines are due to walleye predation as opposed to flushing, other predators, poor stocking success, etc. FWP should consider and monitor the loss of fish

due to bird predation, which has never been done. They should monitor the impact on other species such as rainbow trout and perch if higher daily walleye limits attract a larger number of walleye anglers. We've increased 20,000 angler days/year on that reservoir and it is impacting the other fisheries. The current level of angler use is supposed to be maintained. That is not being done because the increase to the 20 walleye limit is bringing all these extra fishermen in. Progressive walleye management was supposed to be based on triggers outlined in the plan, not predictions or assumptions. This was not followed. They have not complemented the winter fishery by maintaining the current level of burbot, nor have they even looked at the goals that were designed to maintain a catch rate of .40 fish/net. They were also supposed to have strategies to include increasing data collection in providing brood stock for reintroduction to other waters. This has never been done. They were supposed to be looking at increasing the number of brown trout in the reservoir. To our knowledge, this has not been done. We are continuing to enhance the perch habitat and that is showing some success. It is also identified that they should be doing a better job of monitoring fishermen to gather more creel information. This has not been done.

To accomplish the plans, goals and objectives to stabilize declining walleye and yellow perch populations, and hopefully assist with recovery of the adult spawning age yellow perch, Walleyes Unlimited supports for the 2002-2003 fishing season these items: lowering the daily angler limits on yellow perch to 25 and walleye limits be reduced to five fish daily, the Commissioners instruct the department to comply with recovery and maintenance of the entire fishery and adhere to the management plan, and not unduly stress walleye without sound biological proof.

**Holdorf** - I don't have any prepared statements regarding this, but I have been opposed to the walleyes in there right from the start. However, you should leave that perch limit at 50 fish so fishermen can catch them instead of walleye. A few years ago I could go out there in the wintertime, ice fish and fill up a five-gallon bucket with perch. Now there's hardly any perch available in those areas around the silos in the wintertime. It's not fishermen who have done it; it's food for walleye. They want to cut that limit from 50 to 25 for one reason - to give more food for walleyes. Leave the limit as it is so fishermen can catch them. Those tournaments he mentioned are bringing a lot of money into the area. People are coming here to fish because they think there's lots of fish in there. They're not coming here just because there's a 20-fish limit. Leave the walleye limit as it is to help protect the trout fishery. In the winter, people fishing through the ice are trout fishermen. They're not walleye fishermen. We need to protect the trout. The number of fishermen probably has increased. I don't think they're over-harvested. I would like to leave the perch limit as it is at 50, and leave the walleye limit at 20.

**Mulligan** - I would like the department to give a brief response to the comments made. As part of the response, I would like to hear about the creel census and what the creel census is telling us on the rainbow and perch catches.

**Hunter** - I'm going to ask Bruce Rich, the Region 3 Fish Manager, to do that. Before he does that, I think it is important for you to realize the process of developing the Canyon Ferry management plan. It was over a two-year process and it was very contentious. The management

plan as it's written now is a compromise solution that was agreed to by a number of different entities with different groups represented. We are living by that at this point.

**Mulligan** - I've spent a lot of time talking with department people and the biologists. I think I understand what is going on with the data, where the department is at, where they've made their recommendation, and the background with the plan. The triggers that are referred to in here are in the plan, but they are a trigger to change from the 20-fish limit that is in the plan. We have not done that. We are following the triggers in the plan, as Chris mentioned. We need to understand that part of it. I feel I have a pretty good handle on what is going on, although I do need to hear about the creel census. I'd like to hear a response on what's going on with the perch.

**Bruce Rich**, Region 3 Fisheries Manager - I'll address Commissioner Mulligan's specific question on the creel. Then if you want more detail on our fisheries sampling information, we can also go into that. On the creel, although I don't have exact numbers here for you, the trout catch rates have been fairly stable to slightly declining. Perch catch rates spiked a few years ago. At the same time, we saw a spike in our sample netting, but they have declined fairly precipitously since to the same or lower levels than they were in the early 1990s, which is almost an order of magnitude lower than they were in the peak of the perch fishery/pre-walleye time of the early to mid-1980s.

**Dascher** - What do you attribute this perch decline to?

**Rich** - The perch situation there is complicated and I know we don't have a perfect understanding of it. They've been on a decline for about 20 years. Walleye haven't been in that system in significant numbers during that whole period. Yellow perch did undergo a little bit of a spike in 2000 and we saw catch rates increase accordingly. Now, the creel catch rates have dropped significantly and our net catch rate in our index nets is at an all-time low as of this year. We do know that walleye are principally eating yellow perch in there. There are really only two other species of any significance in there for them to eat other than yellow perch. Those are rainbow trout and white suckers. Rainbow trout also declined (we stock those). The rainbow trout net catch rate declined this year and is at or near an historic low for the period since the mid-1980s when we started that net series. The white sucker population also hit an all-time low this year. We don't have a lot of other data currently to tell us that walleye are eating fish other than yellow perch significantly. What we've seen is a significant deflection in all three of the walleye forage species out there, two of which are also significant sports species. That has led us to want to stay a conservative route with walleye harvest.

**Dascher** - Chris, are the walleye in Canyon Ferry a pure walleye or are they a hybrid?

**Hunter** - They are hybridized.

**Mulligan** - If there aren't any more questions on Canyon Ferry, I would like the department to briefly talk to the population structure in the Missouri on the adults that they found and tell us what that means. The perception I have is that we're safe for a couple of years here in not taking action on this recruitment, but I would like to hear what the population age structure is and what we might see next year.

**Lane** - As far as the proposed regulations change for that stretch from Holter Dam down to the Dearborn, when I read this I thought we were going to one brown trout and one rainbow. I can support that. I cannot support leaving the status quo as it doesn't seem right doing nothing. **Hunter** said when they prepared this information a couple of weeks ago, they didn't have this fall's population data. That was the recommendation given you, which was 1 rainbow, and 1 brown trout over 22 inches from Holter to the Dearborn. That is what's in your packet. Subsequently, they finished their fieldwork during the fall population estimates, started looking at the data and got higher numbers of catchable fish than anticipated. It was about the same as last year. That is why the recommendation is to stay with the current regulation. **Mulligan** said he wanted to hear what the age structure means on these adults. There is the option of going with the status quo and then if the numbers next year show that there's a big crash, can do an interim year change.

**Steve Leathe**, Region 4 Fisheries Manager - Here are the latest population figures. We had two public meetings on this issue and there was quite a different complexion to the two meetings. The one in Helena was fairly quiet and most people supported the proposed regulation change. The one in Great Falls was the opposite. Commissioner Lane was there. Interest was expressed in the Great Falls meeting to preserve the opportunity to harvest trout. Since we had those meetings and since we sent the summary of information on the Missouri to you around Oct. 25, we finished the fish population surveys. We do rainbow trout in the fall because that's when the water temperatures cool and the fish aren't moving around for spawning purposes. We get good estimates on rainbows. If you look at the first chart, it shows yearling rainbow numbers. Our concern on the Missouri is the effect of whirling disease on these young trout.

Looking at the Craig section shows three consecutive years of very poor recruitment. Further down around Pelican Point it's not as bad. The last three years in the Craig area we've seen an average of 28-30% of normal recruitment. In the last two years, including 2001 and 2000, we've had record lows. We've never seen three years in a row that are low up there. We firmly believe that relates to high whirling disease infection in Little Prickly Pear Creek, which is the main producer of young rainbow to that upper river around Craig.

The decline hasn't been nearly as significant in the Pelican Point area. We think we're in better shape there because the effects of whirling disease are less. We haven't found it in the Dearborn and only at low levels in Sheep Creek. Those are the two main producers for this lower river. Also, there's probably some contribution of Prickly Pear Creek fish.

The surprise comes on the next chart, which looks at catchable rainbow trout 10 inches and larger. We thought in the upper river we were seeing the start of a significant decline with a peak in 1999 for rainbow at over 5,000 trout per mile historic high. In 2000 it dropped to under 4,000 and we expected it to be lower this year. Because of this poor recruitment, these fish just aren't being replaced. What surprised us this fall was we have similar or even higher numbers of catchable rainbows in that upper river.

Generally, we're in better shape than we thought we would be. The question is why. Looking at the next page shows the actual size structure of the rainbow trout population in these two river

sections. Adult fish in the Craig section are living longer and surviving better than we thought they would. We have record high numbers of 16, 17, 18 and 19-inch rainbows in that upper river in the Craig section this year. However, looking at the chart as a whole, every size group less than 16 inches is declining. This population is aging out. Very little recruitment is coming in, in fact only 30% of normal or less. The prognosis is that eventually we will have major declines in the upper river with rainbow numbers. We could go to 30 or 40% of what our previous long-term average had been prior to whirling disease. With a river that once supported 3,000 catchable rainbows per mile, we may be looking at 800, and even fluctuating between 300-500 some years. Maybe in the best years it could get up to 2,000 unless something changes with whirling disease. On the top chart it shows that not only do we have good representation of large rainbows but still a pretty good size range of large rainbow. We have quite a few 16 and 17-inch fish, as well as 18 and 19 inches. The one concern I have and we just don't have the data is that in the meantime we have very low numbers in the 14 inch or less size. We still have a three-fish limit out there, only one over 16 inches. It's a heavily fished river, but our most recent creel survey and data for year around is from 1993 and 1994. We had a five-fish limit then and that was changed to three fish in 1998. We don't have any good data to evaluate what the current level of harvest is on these smaller fish.

**ACTION:** *Lane - I move to amend the regulations to state that from Holter Dam to the mouth of the Dearborn River, the daily limit be set at one brown trout, 22-inch minimum, and one rainbow trout, any size. Walker seconded. Motion passed.*

**Dascher** - I'm concerned that if the perch population is as low as we've seen it, why do we want to hold the limit at 50 perch daily? Why don't we reduce that? **Hunter** responded that he thinks because they are still within the three-year average as far as the plan is concerned. **Mulligan** said he is concerned that if the perch limit goes any lower we will end up with wasted fish. **Rich** said the catch rates are such that lowering the limit to 25 probably wouldn't change fishing mortality significantly on yellow perch. Region 1 has changed the 50-limit on Flathead Lake, so the only perch limit in the state at 50 is at Canyon Ferry. They're unlimited elsewhere. For the time being, we feel that's sufficient, but we will certainly continue to monitor it. **Dascher** said that while the perch numbers are down, your statistics don't show the walleye population taking off like you thought it would. **Hunter** said that's not necessarily the case because the regulation may be doing its job in keeping things where they are.

**Rich** - What I've handed you is a packet that has a concentrated set of the most pertinent data. If you'll look at the first page inside the packet, you'll see the walleye, yellow perch and rainbow trout catch trends. As Commissioner Dascher has pointed out, you can see that yellow perch are way down. This net trend is mainly looking at adult-sized perch. The next page shows the walleye population trend from 1996 through 2001. It was declining in 1999 through 2000. It has rebounded in 2001. We consider this a formative population. It's at a state where it's taking off. We think that trough in 2000 is basically the end of the "old guard" and the beginning of the new and abundant guard in walleye that are coming in. This graph is further broken out into age 0, age 1, age 2 and age 3. The two I'd like you to concentrate on are first, age 0, which has been pretty consistent through time. However, in 2001 we saw a tremendous increase in young-of-the-year walleye in our catch. The other to look at is age 3+, which are the 18 to 20-inch fish and larger that Mr. McAlpine referred to earlier that have been abundant in the system. Despite

what the catch rates have been in the derbies, particularly the Townsend Derby, what our catch rate shows is we are now at the highest number of adult walleyes that we've seen in the period. While the trend bobbled around a little bit in 2000, it is basically increasing.

That last page you're looking at would speak to the bag limit on walleye and basically shows the proportion of anglers who have caught zero through 20 walleyes categorically in our creel census 1999 through 2000. I might also suggest that when the plan came into effect in 1999, we approximately doubled our creel effort there. It's still not what we'd like to have, but we did increase it significantly.

**Dascher** - It does look like you're staying within your plan with the average that is there. I am concerned with the decline in perch and trout, even though we're still taking a tremendous harvest of walleye out there. **Rich** responded that at this point, they think they're within the plan by staying at the status quo, which is a 20 fish bag on walleye and 50 for yellow perch.

**McAlpine** - I have a Montana Department of Fish, Wildlife & Parks Canyon Ferry Reservoir Summary of Baseline Fisheries trends from 1955 to the present. This chart shows the perch nets to 1955, the first one FWP did. As you can see, it shows 1955 down to where we're at in 2001 with perch per net. They quit collecting perch in 1984 and picked it up again in 1994. In 1994 it's the same level as in 2001. It has grown, but now it's on the way back down. Bruce Rich's statement about the high pre-walleye levels of perch isn't shown in this chart. I've fished Canyon Ferry for 25 years and perch fishing is up and down; it depends on the spawn. The creel surveys now indicate a desire to catch walleye and dissatisfaction with the number of walleye they're catching. We at Walleyes Unlimited feel that that 20-fish limit is affecting the number of walleye in the reservoir.

**Mulligan** - I think the place and time to talk about that is when we look at the management plan. We have a plan that a lot of work went into. We are within the bounds of that plan with these proposals, and we should stick with it. When the management plan comes up for review, then we can decide if we think we want to increase the catch rate on walleye and address those things. Right now, we're within the bounds of that plan. That's why I support going with the department's proposals. We have a yearly public meeting and we're about three years out on the plan.

**ACTION: Walker** - *We have before us the original motion as amended, with John's amendment to that. [The original motion is to approve the Central District fishing regulation finals, as amended for the Jefferson. John's amendment states that from Holter Dam to the mouth of the Dearborn River, the daily limit is to be set at one brown trout, 22-inch minimum, and one rainbow trout, any size.] Motion passed by a 3-2 vote. (Walker, Mulligan and Lane for; Dascher and Murphy opposed.)*

**Hunter** - Only two were issued that generated interest in the Eastern District.

**ACTION: Dascher** moved to adopt the tentatives for the Eastern District. **Murphy** seconded. **Walker** asked for questions from audience; there were none. **Motion carried 5-0.**



**Walker** - I'm changing the agenda and moving to Enforcement issues.

**14 and 15. Blanchard Lake and Sophie Lake Rule Changes - Petitions. Beate Galda,** Enforcement Administrator - We have two petitions for rulemaking that were submitted to you. The Blanchard Lake petition was submitted by Jim King, Director of Friends of Blanchard Lake, and was signed by 10 Whitefish residents. This petition asks the Commission to amend the water safety rules to restrict the size of motors allowed on Blanchard Lake to 10 horsepower. The second petition was submitted by Darrell Zauner of Eureka and is for Sophie Lake. It requests that the Commission amend ARM Rule 12.11.115 in one of two ways: either reduce the 200 foot from shoreline no-wake area to 200 feet only from the FAS swimming area and from developed property, but have no restrictions on the remaining part of the shoreline; or eliminate the 200-foot no-wake zone on Sophie Lake entirely. The Commission must act on a petition within 60 days from when it is filed and has basically two options. They are either to deny the petition with reasons, or grant the petition and initiate rulemaking in some fashion. The Commission is being asked to amend rules that were done in response to public concerns and comments, and they took effect last May. These rules have thus been in effect only one boating season. The reason the Commission went to this general rule was that the public seemed to have a desire for different rules at every lake. The general rule was an attempt to address the conflicts and to keep rules uniform so boaters who move from lake to lake wouldn't have to learn a new set of rules each time they went to a new lake. I've asked Dan Vincent to be here and give you a little background for the rules.

**Dan Vincent,** Region 1 Supervisor - Passed out maps showing the no-wake zones. There are over 600 lakes in the Kalispell district. They're accessible by road and for public use. Over 100 of these lakes are greater than 35 acres in size. These lakes attract a lot of people, people like to live on water, they like to play on water and, unfortunately, not all of them like to use them in the same way. As a result, we've had increasing conflicts between users on waters throughout western Montana in the last 10 years. In addition, technological changes with respect to watercraft on the market today have helped to heighten the problems we've had.

In 1993 in Region 1 we held our first public hearing in Kalispell to address some of the comments. We had over 200 people attend the very first meeting where emotions ran quite high. We were in the middle of a planning process for the Thompson Chain of Lakes, which is a large FAS the department owns between Kalispell and Libby. There are 21 lakes at the Thompson Chain of Lakes. We went back and began a rulemaking process to address some of the conflicts there first. After exhaustive public comment, we took some recommendations to this Commission and in 1997 regulations were passed for the Thompson Chain of Lakes. For the most part, those were well accepted. We did a survey in 1998 and 85% of the public, both landowners on the water and general recreationists, were satisfied with the new rules we put in place.

In 1999 the Legislature expanded the authority of this Commission to address conflicts on water beyond just natural resource concerns and health and safety considerations. It enabled this Commission to deal with social considerations such as noise and other kinds of conflicts. As a result of that, the Commission directed the Department to go out and conduct another series of

meetings statewide to address the issue and come back with a series of options for the Commission to consider.

We looked at all waters throughout the state and ultimately came back recommending to the Commission that we only address the Western District, which would be Regions 1 and 2. The regulations to be considered would address lakes and reservoirs, not river and streams. We received over 300 responses from the public and some of the comments could be categorized into four areas: concerns for noise, shoreline erosion, safety, and conflicts with nesting waterfowl and shorebirds. We received many more comments, but those are the four major categories the concerns addressed.

Solutions identified by the public included everything from law enforcement staying out of it, to others who felt we should just close this kind of activity altogether on waters. There were a lot of other comments in between. People suggested regulations such as distance from shoreline where there would be no wakes, clockwise or counter-clockwise direction of movement, buoy portions of lakes, specific hours of operations and a myriad of other formulas. The direction from the Commission was to try and come up with a regulation that addressed most of the lakes in western Montana to get some uniformity. The final recommendation from the department was a 200-foot distance from shoreline regulation, no-wake zones established on lakes greater than 35 acres, and lakes under 35 acres would be closed to leaving a wake. The ratio was about 4-1 people who were favorable in the Flathead area, 5-1 in Lake County, and about 2-1 in opposition in Lincoln County. The primary reason people opposed it in Lincoln County, with the exception of Sophie Lake, was they went through an exhaustive process two years before on the Thompson Chain of Lakes, and they said since that seemed to be working to leave that alone.

As part of the final decision the Commission rendered, in August of last year the Commission recognized that in a perfect world it would probably be best to customize regulations according to the particular attributes of an individual body of water. At the same time the Commission was conscious of criticism it has received in the past with respect to non-uniform hunting, fishing and recreational rules and regulations. So the Commission ultimately adopted the rule that you see before you, but put in a proviso for the public to come back annually and petition the Commission to determine if exceptions to that rule should be made on a case-by-case or lake-by-lake basis.

That's where we are now. We have three individuals here today. Mr. and Mrs. King would like to talk about a lake that is very important to them, Blanchard Lake, and Mr. Zauner would like to talk to you about Sophie Lake. Will also open to comments or questions you have of Ed Kelly, our Region 1 Warden Captain who is also here today, or me.

**Jim King**, Director, Friends of Blanchard Lake - Passed out letters with comments from their neighbors and comments he will make. First want to public thank Stan Meyer, former FWP Commission chairman, because after fishing in Blanchard Lake last year he tried to get a special exception for Blanchard Lake. The Friends of Blanchard Lake is an association that grew out of this concern and supported the new rule. Even at the hearing in August of 2000, those who spoke made the point they didn't think it went far enough for Blanchard Lake. He talked with Dan Vincent after that meeting and asked about the status of their petition in 1998. He said they

could re-petition. They did that last year and it was denied. When the time came around this year, they decided to re-petition and appreciate the opportunity to do so.

**Rebecca King** - Will read excerpts from some of the support letters their neighbors gave them to bring. First letter is from Barbara Clayton, a retired teacher, who has lived on the east shore of Blanchard Lake for 20 years. She is concerned about loss of the tranquil environment but is more concerned about a damaged environment that will adversely affect the perch, bass, turtles, etc. Need to put in place restrictions and guidelines for this lake, i.e., restrict size of motors. The next letter is from the Grafs. Dick is a doctor and he operates the water system only for the small development they have near the lake. He asks to pass his concern for their many neighbors who swim and canoe in Blanchard Lake. With its size limitations and popularity, it becomes increasingly more dangerous for families and children to enjoy the lake without fear of being capsized or run into by motorboats. High speed or high-powered motorboats are not acceptable to the future health of the lake. Next letter is from Rick Stevens, who also lives on the northeast side of the lake. He works for the U.S. Forest Service. Supports petition to limit the boat motor horsepower size on Blanchard Lake. Feels the limitation is desirable both from standpoint of wildlife protection and human safety. Blanchard Lake is extremely shallow and the northernmost portion of the lake is connected to the larger southern portion by a narrow channel. By the end of this summer it was only about one meter deep. Next is an e-mail from Kirk and Harriet Bryan. He is a consultant to the NOAA. He strongly supports limiting boat motor size to 10 hp. or less on Blanchard Lake. The lake is small and very narrow and it is possible to row across it in a few minutes. Because it is spring-fed with no inlet or outlet, it is particularly vulnerable to the inevitable pollution of large motors, especially during fueling. Gerald Askevold is president of the lake association and is also a monitor for the Flathead Basin water quality agency. They have owned property on Blanchard Lake since 1976 on the south end of the lake. Guidelines should be in place to preserve the wildlife sanctuary quality of the area. Limiting the size of motorized watercraft is an important first step in preventing destruction of wildlife habitat along with the tranquility, peace and quiet. Cameron Blake and Paula Milner both live on the northwest side of the lake so these letters represent people all the way around the lake. She says their family strongly encourages the Commission to limit horsepower size on Blanchard Lake. This lake is home to many nesting water birds and is used as a hunting area by birds of prey, including osprey, occasional bald eagles and a golden eagle. It is also home to many nesting birds, including a pair of loons. Water skiing has no place on this lake. Big motors traveling fast degrade the water quality. Fast boats are scary and potentially dangerous to swimmers. They swim regularly in the summer and have to time their swimming to avoid times of heavy boat use.

**Jim King** - Must recognize he is talking about his favorite place in Montana. There are three points to make in favor of rulemaking to achieve a reduction in motor size on the lake: safety is one because of changing level of water (it's about 30 feet in the deepest part). Right now they are at the highest water level. It goes up and down over the years so have stumps, logs and snags that extend way out from the edge of the lake making it hazardous for boats traveling at high speeds. Second, they're looking at an influx of people. Until 20 years ago, they had 1 permanent house and 7-8 summer cabins on the entire lake. Then 20 years ago there were about 20 homes built on or near the lake, and in the last 10 years have 9 more with 4 under construction. There are two developments in the works now and the big one on the west side of the lake will provide

access for 55 more families. The third thing is that after an absence of several years, had three pairs of loons on the lake this summer; want that to keep that. Still have several kinds of ducks, mergansers, blue heron, osprey and the grebes. Noticed the latest correspondence from FWP had a new letterhead that promotes conservation. Conservation needs preservation and protection against loss and harm. It also means prudent planning and conscientious advance preparation. That's what they stand for. What they propose here is having a 10 hp. limit on motors, which is plenty of motor to get fishermen where they need to be and maintain Blanchard Lake as a healthy system for years to come.

**Mulligan** – We need to rule on these separately, but there is an interrelated issue that we need to discuss that will affect both. That is the basis on which to make exceptions to these rules. Must keep in mind the needs of the people, but should look at the effect and fallout throughout the system that would come from approving a petition on these lakes. I think there is a bigger thing we need to look at as part of the discussion. **Walker** said perhaps it would be most appropriate to hear from Mr. Zauner since they have different opinions with respect to different lakes.

**Darrel Zauner** - Sophie Lake is a lake that about 15 people use with powerboats and would like to see that continue. Sophie Lake is about 400 feet wide. One commenter doesn't want any boats on lake. Another user is kind of noncommittal. Sophie is a lake that has no wildlife on the lake. Water level fluctuates drastically. There is a lot of gravel and shoreline showing on it so not an erosion problem. Not aware of any safety issues. There are three other no-wake lakes in that immediate vicinity. Has always been used for recreation. One whole side is mostly state game preserve so there is not a lot of private property on the lake. Want a 200' no-wake zone amended on Sophie Lake.

**Vincent** - Before you is a map that shows both Sophie and Blanchard Lakes. My recommendation is not to grant exceptions for these two lakes for the sake of uniformity. There are 103 different lakes that exceed 35 acres that fall under this rule. I asked my staff how Sophie Lake and Blanchard Lake might be dissimilar to some other lakes. Received comments from their biologist, Gael Bissell. Uniformity would be the biggest consideration. The rule-making process consumes hundreds of hours of time. If we had 1, 2 or even 5 lakes in northwestern Montana, could see some real advantages to customizing regulations to a particular lake. In northwestern Montana have 103 of these cases, and could conceivably be doing regulations on all 103. These are publicly owned waters. Sophie Lake has a FAS, as does Blanchard Lake. **Murphy** asked if there have been other lakes in the area they had heard discussions about which would open it to similar requests. **Vincent** said Mr. Winnie spoke earlier. He lives on a lake outside of Kalispell and may submit a petition. There may be others. **Hagener** said the department has had calls about other lakes in the area. Most of them are about lifting the rule as it restricts them, so they really can't use some of those lakes due to the 200' no-wake zone. **Vincent** said they are expecting petitions from Lake Blaine, Rogers Lake and Echo Lake. This year things were compounded because of the drought. Blanchard Lake has a very narrow neck, which is also true for Sophie. It's narrow any time, but especially in a drought year. **Murphy** said he has the same concern that Tim indicated as far as consistency. When you look at the map and it looks like you may be breaking the law every time you run a boat there, in some cases that might not be appropriate.

**Jim King** - If everything in Montana were consistent, there would only be one of you. Blanchard Lake doesn't compare at all with Sophie Lake or Foy's Lake. Blanchard is primarily wildlife refuge, whereas Sophie and Foy's are primarily recreational lakes for boats. Putting them all together and saying just because there are 100 of them in northwestern Montana they all have to be the same is ridiculous. On the petition we submitted in 1998, there were 125 names on it. Over half of those names are people who use the lake but don't live there.

**Mulligan** - It would probably help if I clarified what I mean by consistency. I don't speak of consistency meaning we do exactly the same thing on every lake. I'm referring to consistency on how we make a decision. Not at all interested in going through this lake-by-lake for 100+ lakes. Is there a safety issue we should look at consistently on each application coming in that should be applied? Is there an enforcement issue that we should look at on each application? Is there a wildlife issue we should look at for each lake? We don't have time or resources to go through a public process on this lake-by-lake with neighbors being angry at each other because they have different desires. If there is no opposition, that is not a bad criteria. **Jim King** said everyone on Blanchard Lake has been unanimous. Only three or four people run boats on the lake. They are looking at a changing population of 20 families around the lake to 100 families, all with access to the lake. **Dascher** said a new subdivision was mentioned with 50-60 home sites going in, and if those folks were contacted to sign the petition. **Jim King** responded, "no." **Dascher** said she was thinking in terms of here's a subdivision going in with 50 homes, and the reason they're buying is because they're close to the lake and want to go to the lake with their boats. Will that be a problem? **Jim King** said they have put in a dock that goes out through the reeds and are telling people they can bring a canoe in there. They're kind of scared when talking about that many people. They'd like to have the lake and have the waterfowl. Anglers are supportive. It's four miles from their house to Whitefish. There's a lot of fishing and they use boats almost exclusively. In winter there's a lot of ice fishing. Fishing pressure is about average compared to other lakes in area. Much of the pressure is in the wintertime. **Dascher** asked if they just wanted to limit to 10 hp. or did they also want a 200' no-wake zone. **Jim King** said, "yes," because if you go to 10 hp., it probably doesn't matter how close you are to the shore as you're not creating any big problems. If you don't have 10 hp., then just for the boater's safety you need at least the 200 feet. They didn't want to go to no-wake because fishermen have been using that lake for 50-60 years. **Walker** said he did some fishing with his brother who fishes with a boat. Used to buy motors 25-30 years ago in the 5 to 7-1/2 range for trolling. They were very good at it and seemed to satisfy all the criteria for fishing. Yet he now fishes with a fellow who has a 25-hp. motor and it trolls as well as any 5 hp. he was ever on. So for the guy who has a 25 instead of a 10, this would seem to be discriminatory.

**Ed Kelly**, Region 1 Warden Captain - It would limit him there and it would also fly in the face of what we've tried to accomplish in the past. That was the compromise we worked through for this after thousands of hours in those meetings. As far as I'm concerned, this will throw the whole thing right out. We had  $\frac{3}{4}$  of the people accept a compromise proposal that came through this Commission. We could have people with 200 hp. and troll quite easily. The key is a new fuel-injected motor and one that is well tuned. That is what takes care of additives getting into the water. Older motors pollute more than new ones. I would just ask you to research all of that before you make a decision. Things have been thrown out that are really misleading. **Walker** asked if there was flexibility on the no-wake zone, or was it agreed at 200' for all. **Kelly** said

that was really disputed. From their region they wanted 100 feet and other regions wanted 600 feet. Then it came back down to 200 feet. At 200 feet there's a lot of precedence for that throughout the country now, and it's quite common throughout the country. **Mulligan** said there was some interest to go with 300 feet, but the Legislature passed a statute that talked about no-wake zones around boaters, docks, swimmers, etc. They felt that unless they had a clearly defined safety issue and a justifiable specific basis, that they not go outside the bounds of that number used by the Legislature. **Jim King** said the 10 hp. was one of the numbers the department used on some of the lakes, and it seemed to square with his experience with fishermen at Blanchard Lake. That's where the 10 hp. came from. It came from FWP deliberations and rulemaking. **Walker** said that was why he asked the question. He would have agreed, but the technology has changed a lot. **Jim King** said there are fishermen coming out there with \$20,000 to \$30,000 boats and they've got 200-300 hp. engines. They come zipping down the lake but they're not a problem. They stop and they fish. Problems come from those going around and around, not those who come in, go somewhere in the lake to fish, and then leave. **Zauner** said the rule does have a clause that you can pull a skier or have a jet ski at higher than no-wake speeds. His concern about the 200' is you can't go through certain areas because of narrow parts of lake. He doesn't believe the Commission's thought was to shut lakes down.

**Mulligan** - In fact, the section to allow the process we're going through right now was recognition that there may be some lakes that don't fit. I hope you understand what we're saying is we don't want to go through what we're going through right now 103 times. I don't profess to know what the right answer is. I know what the wrong answer is, which is to get into that process. We had a fatality this summer on a narrow spot. We must consider safety vs. convenience of being able to go through narrow spots. I'd like the warden captain to talk about how we're doing with enforcement on these situations. We don't want a situation where we're setting people up to be illegal and not enforcing it. **Kelly** said they are looking at identical lakes and arguing opposite ends of the spectrum. One wants it closed and one wants it open. They patrolled hard this summer. They had a lot of comments and did go through an educational process. It did not work the way he thought it would. He thought they would get hammered sometime this summer because of the 200-foot process. He asked the County Attorney how to enforce it and was told to just follow the law. It's only the first year. Thought it worked pretty well this summer. Anything that is new is a bit of a hassle. Satisfied with the way it works, and most people they checked were satisfied. **Mulligan** asked if they had a lake with no opposition to changing it, why would they oppose that? Is that reasonable criteria for making a change? **Vincent** said they would rather look at other criteria instead of total agreement because they would be setting a precedent. The problem is, if they make an exception for Sophie and Blanchard, then they could be making exceptions for every other lake that had similar characteristics. In the Swan River when they went through that process a couple of years ago, they did make a recommendation that there be a closure on the Swan River because it was immediately adjacent to a Fish and Wildlife Service natural area, and there were some unique attributes associated with that. He suspects over time he will get recommendations for closures to lakes. If they had definite unique characteristics, he would recommend that they consider that. He doesn't feel the characteristics in either of these cases are unique.

**Walker** asked about Sophie Lake where it appears water skiers can ski on it and not be in violation of the code. They can pass through that narrow section and not be in violation. Is that true? **Kelly** said that's correct. A fisherman or normal boater would be if they were making a wake. **Vincent** aside if a water skier would not be in violation, but a fisherman would. **Kelly** responded, "That's correct." When they were at Sophie Lake this summer, he shot it that with his little gauge and it was closed due to low water this summer. But say this is closed. Could ski through closed area and back and not be in violation. **Zauner** said they are talking about safety. Can go 75' from a fisherman by law, but must stay 200' from a dock or shore. **Walker** said the final analysis is that they depend on their judgment. **Zauner** said, "I know. We try to self-patrol the lake. We try to educate people about 200' rule."

**Murphy** - From a biological standpoint and getting at the 10-hp. issue, what is your opinion of the impact on the wildlife resource? **Vincent** responded that any activity associated with nesting waterfowl or shorebirds can have an impact, including home ownership with dogs and cats, boats, swimming. Asked Commissioner Murphy if as an alternative, he was looking at possible compromise at Blanchard Lake. If so, the recommendation made by Gael Bissell, their biologist, was quite good in the last paragraph. She suggests the possibility of voluntary designation in a place like Blanchard Lake recognizing it does have important wildlife features. They have done that at Loon Lake and some other places throughout the region. They could post it at the access site. They have been working with the Loon Society to post and place buoys in some locations where there's nesting of loons seasonally. That would be an alternative to be considered in a place like Blanchard: go with a voluntary no-wake. It wouldn't require a decision by this body but something where they could go back as an agency and work with some of the local folks.

***ACTION: Walker** - Ask to make a motion. **Murphy** moved to deny the petition on Blanchard Lake. **Lane** seconded. Any more discussion? **Dascher** suggested trying voluntary no-wake zone on Blanchard Lake.*

**Vincent** - We could sign it at the access site at the north end of lake. **Kelly** asked if that was for the entire lake or just the bird resting area. **Vincent** said he would anticipate going back, talk with their biologist, Gael Bissell, and have her ask the lady who wrote this letter where the real critical areas are for resting and nesting waterfowl. Get some guidance from her and then go back and sign it accordingly. **Dascher** suggested putting some buoys or something up just for those critical areas. **Vincent** said they could commit to working with the Kings and some of their neighbors. They have been very helpful as he indicated today. Knows he's been looking at the loon nesting and other things, so they could work closely with the neighbors to implement voluntary restrictions in necessary areas. **Mulligan** said he thought that was really important. They can't just walk away and say as the growth of use increases they're not going to address it and the impact on the biology. They must make a commitment to monitor the impact on wildlife on these small bodies of water. **Dascher** asked if it would work. **Vincent** said they have tried this at several lakes, Loon Lake for example in the Thompson chain, and it has been very successful. **Dascher** said she would like to see them try that. That way could still have boats, have the 200 foot from shore thing, yet have designated areas around the lake that would be protected. **Vincent** said they will be working with their biologists to find those areas and follow through.

**ACTION: Walker** - *With that, I'm going to call for the question. All those in favor designate by saying "aye."* **Motion passed.**

**ACTION: Murphy** - *I will make a second, similar motion to deny the petition on Sophie Lake. Lane seconded.*

**Walker** - Have a motion and a second. Do we have further discussion on Sophie Lake?

**Mulligan** - I would like some clarification on enforcement. When we had this discussion before when we set these in place, there was recognition that we're not in the business of watching every skier or boat. We want to recognize that the objective of this is not to set up traps to increase the fee collection for the department. We want to be real reasonable with that. What I'm hearing the gentleman on Sophie Lake saying is he wants to be legal. **Kelly** said he thought Mr. Zauner was fully aware they are not trying to entrap him or anybody else. They did spend a lot of time on this. Do not anticipate writing tickets for 199 feet. That's not their approach to water safety. Did not write a ticket last year; they did a lot of education. He anticipates the education to continue through this year. They find that people are buying into it. **Mulligan** said another side of it is, if the water level goes way down, they've got safety issues and may have to do something different. **Vincent** said that was a concern at the Thompson Chain of Lakes when those regulations were set. They went back the next year and through a user survey found that there's 85% satisfaction level with that regulation. He thinks it implies they use a lot of discretion and judgment with their enforcement.

**ACTION: Walker** - *All those in favor of the motion signify by saying "aye."* **Motion passed.**

**Jim King** - Thank you, Mr. Chairman, thank you, Tim. I appreciate the idea and will expect some contact from Dan Vincent on getting the voluntary thing going. We'll try it. Thank you very much.

**16. CR Kendall/Canyon Resources Mineral Interest Donation - Information. Paul Sihler, Field Services Administrator** - Similar to the first two Parks Division agenda items, this is a proposed lands project that is far enough along that there is a project at this point. We're bringing this to you as a proposed project for your thumbs up or thumbs down to proceed. The proposed project is to obtain a donation of mineral rights under approximately 35,000 acres of land owned by Montana Fish, Wildlife & Parks either in fee title or in conservation easement.

In 1997 Montana Dept. of Environmental Quality (DEQ) cited the CR Kendall mine owned by Canyon Resources for a water quality violation. (It's located outside of Lewistown.) They agreed to a penalty of \$132,000. Subsequently, Canyon Resources proposed to DEQ that they pay that penalty through a donation of mineral rights under state lands. The DEQ contacted FWP to see if we would be interested in receiving those mineral rights to settle this penalty. We expressed an interest in trying to consolidate the surface and subsurface estates. Reviewed list to see what FWP sites are involved. There are 160,000 acres of mineral rights located under lands we have some interest in.



The next step was trying to narrow the field because we're looking at about 35,000 acres that the penalty is equivalent to in mineral rights. Looked at what lands are at the highest risk for development. Using a set of criteria, looked at various sites, which then yielded a list of 18 sites submitted to you in the background information. It includes six WMAs, six fishing access areas, four state parks and then two conservation easements. What remains is finalization of that list. Looking at hazardous waste assessment, it is our understanding there has been no mining activity since Canyon Resources obtained those rights. We do have work to do there to be sure we're not acquiring any liability. Do not intend to do a MEPA review. Need to finalize the acreage and the values. Talked with Plum Creek and they have no problem with our acquiring mineral rights, but need to finalize it with them. If the Commission concurs with proceeding on this, next spring will bring to Commission for final action. Seems like a good opportunity to consolidate estates and minimize potential conflicts in the future. John Arrigo, the Administrator of the Enforcement Division of the DEQ, is here. No one is here from Canyon Resources.

**John Arrigo** - This proposed settlement has stemmed from a water quality enforcement action we initiated against Canyon Resources. Issue was they had disposed of waste rock. Precipitation migrated through these rocks and discharged it, which was essentially the violation. Issued an order, which they acted upon. That has created some water rights concerns because they essentially dried up the streams. Filed a complaint in court to preserve the statute of limitations and proposed a \$305,000 penalty. It languished for several years. As part of permit, have to post a bond. Recalculated the bond and redesigned the reclamation plan. In round numbers their current bond is \$1,500,000 and we thought they needed \$6 million. We're in dispute with them on that now and we're doing the reclamation on site to make sure we optimize the use of those funds. Not interested in putting the company out of business. Settled on approximately \$132,000 penalty. Will allow company to do a project to offset a portion of the monetary penalty. We knew the company didn't have any money and weren't going to pay us the penalty, so looked at creative ways to try and close this case. Settled on the \$132,000, threw out some violations, and agreed that they would pay approximately \$13,000 in cash and the remaining \$118,000 would be offset by this contribution of mineral leases. Normally in these settlements of these projects, it's not a dollar-for-dollar settlement. Instead, to offset the penalty, they're going to donate leases at 1½ times that, approximately \$178,000. We estimate the value of the leases at approximately \$5/acre, and that's where Paul comes up with 35,000 acres. Feel it's a good deal for the state. I hope you authorize Paul and the department to proceed. FWP put a lot of effort into this and is approaching it very reasonably.

**Murphy** - Are the acres identified or are they still unknown? **Sihler** said they have identified the 18 sites listed at the bottom of the page and onto the back that are priorities at this point. Those are the sites they are intending to look at based on the criteria he outlined. Those sites are Mt. Haggin WMA, Smith Lake FAS, Thompson Chain of Lakes FAS, Lake Mary Ronan State Park, Thompson Fisher Conservation Easement, Calf Creek WMA, Garrity Mtn. WMA, Little Bitterroot Lake State Park, Horseshoe Lake FAA, Island Lake FAS, Three Mile WMA and Bolin Conservation Easement, Blackfoot Clearwater WMA, Corricks River Bend FAS, Mt. Jumbo WMA, Salmon Lake State Park, Johnsrud State Park and River Junction FAS. Those are the specific sites they've identified they have mineral rights for which they think would be a priority for the department. Part of what would go on between now and when they bring this back to the Commission would be to confirm those are indeed sites they want to acquire and finalize the

acres involved. Acreage represented here is the 35,000 acres. Most of that is fee title. There is 180,000 acres of mineral rights that Canyon Resources owns, so there was a lot to choose from. **Mulligan** said they want to be sure they have concurrence with adjoining properties, county commissioners, etc. It looks like that has been considered. **Sihler** said they had not considered working with county governments. Because they are not doing a MEPA review, maybe there is something they should do in the way of public involvement on this. **Mulligan** said when they have fee title, it is clear they must do what is best for their mission. When it is not their ground, it is important to consider the other interests. **Sihler** said there is a split estate and there is the potential for development. He thinks the developers recognize that's a more costly place for them to contemplate development. Where they don't own fee title, it is deserving of some additional effort. **Mulligan** said he didn't think there was any liability that came along with mineral rights. He thought that was tied to fee title ownership or operation. Asked if there was a potential to pick up PRP status or something from mineral rights. **Sihler** said on these sites where they own fee title, they already have that liability. The concern was being certain what they were getting. Requirements are there not be mineral development where the landowner owns those mineral rights. He didn't think there was an issue with those landowners, but their concern was that if there had been any work done, particularly on those conservation easement lands where they had some ownership in the properties, that they not get stuck with some liability they weren't aware of. **Murphy** thanked DEQ for their involvement in this.

**Sihler** - With the Beckman Estate donation, just a quick update. At May meeting in Missoula, we brought to you a proposed project, the Surprise Arrow project in Region 4 that was to be a donation from the money provided by the Beckman Estate. The estate was set up to establish a WMA in Region 4. The Surprise Arrow project was a replacement project for the Ferterer project, and the Ferterer project was a project the Commission approved a year ago in December. We never made it to closing on that project because of some issues between Mr. Ferterer and his debtors. Rather than dealing with that, we chose to pursue an alternative project, which was Surprise Arrow that we presented to you in May and you gave your thumbs up for it. Late this summer Mr. Ferterer died and his heirs decided they do the project and address the debt issues. The Beckman Estate had been happier with the first project. It was their preference to complete the original project with Mr. Ferterer over pursuing the alternative project, the Surprise Arrow. So we're back on track with the original project with the Ferterers intending to close in the next couple of months. I just wanted to update you on this because it was a little convoluted.

**17. 2002 Annual Rule for Sale of Nonresident Combination Licenses - Final. Dave Mott,** Chief of Administration and Finance - I'd like to quickly introduce Kelly Gorin, who has been sitting in the audience all day. She is new to FWP folks. She is a budget analyst and will be doing much of our analysis as it goes out of this agency, to the Governor's office and eventually into the Legislature.

We have here today final action on the Nonresident Combination License Rule. The 1995 session set up a funding mechanism for our current block management program. That was pretty much a set aside guaranteed license for the outfitter in two categories. The first category was the B-10 license, which is like our Resident Sportsman license, which includes a deer, elk, upland game bird, fish and conservation. They set 5,500 of those aside and 2,300 of B-11 licenses. They're the same thing as the Combination license, less the elk. The mechanism to fund block

management was set up through that session. The outfitters were essentially guaranteed licenses in those categories. The money generated came from controlling the demand on those licenses. As the demand goes up for those, the Commission has the authority to raise the price. With the addition rise in price, the intent was to control the demand within those limits that I described - 5,500 for the B-10 and 2,300 for the B-11. It wasn't on a yearly basis, it was calculated on a five-year average. At the September meeting there was a debate about how to do this. We just finished a completed five-year segment last year. We're starting another segment coming up. There was a debate about how those calculations ought to be. Before the Commission makes a decision on that, I thought we should quickly go through and agree to the computations before we launch into the decision.

Last year we were at the end of the five-year period so the Commission and the department talked through what is a reasonable way to compute this five-year average. On the blue sheet right down below, you can see what the law says. The methodology that the Commission adopted along with the department was to go with four years, drop off the oldest one, have four years running and then add in the year we're talking to at hand. For example, for this year we would start with 1998, 1999, 2000 and 2001, which is our four-year base. We add up those over the four years and we sold 22,325 licenses. To complete this five-year loop, you do the subtraction, 27,500 that would be available for the five-year period the way the law is laid out, which would mean 5,175 available for the year we're in right now, and that's net.

On the backside of that page, you can see the same analysis for the B-11 licenses. With this analysis there, there are more licenses available there at 2,891. The bottom line is, we're over-subscribed on the B-10 and under-subscribed on the B-11.

The other methodology came from Bob Lovegrove, a gentleman from Missoula, who came before the Commission in September, speaking on behalf of the Montana Fish and Wildlife Association. His different way of looking at this was to first take the five-year block, look it over, see where we stand and set it aside. Then start fresh with a five-year block beginning in 2001.

The essence of those calculations are that it would be irrelevant what happened from 1996, 1997, 1998, 1999 and 2000, other than to use that as an experience base and a knowledge base.

On the flip side of that we did the same thing showing the Commission the numbers for the deer license. The blue sheet and the yellow sheet for the B-10 license you can reach the same conclusion. There was an oversell with either method you look at. It's more dramatic with the blue sheet. The deer is a little different in that it's a lot closer when drop out the first five years and just consider what happened this year.

I didn't want the Commission trying to make a decision here without seeing in black and white the two opposing views of how these computations would be handled.

**Walker** - Was a memorandum circulated the last time we discussed this, something written by Pat Graham, that indicated we would be using the rolling average? **Mott** said, "Yes, there was." He said there's a memo from Pat and there were some discussions about the blue sheet, the

rolling average, being the appropriate mechanism and the calculation to use. **Walker** asked if the Commission did act on that or did not, or accepted it or did not. **Mott** said he didn't remember a specific action of the Commission. **Dascher** said she didn't think they took a specific action. She thought they agreed that that would be the way they would calculate this. **Mott** said that's how he recalled it. **Murphy** asked if it was based on an interpretation of the statute? **Mott** said it is. He thought it was the interpretation that Pat Graham and Bob Lane came up with. He wasn't sure there was a right way or a wrong way, but they have to adopt one way. Defending to Legislative auditors and to others, they have to pick a methodology and stay with it. He offered that not from a legal point of view, but dealing with outside entities. **Dascher** said she thought their feeling was the rolling average was fairer than the other. **Mulligan** said there was some discussion of the language of what logically sounded like the intent of Legislature would be. The rolling average seemed like what the intent was. He wanted to meet the intent of the Legislature and didn't think they had the authority to go outside intent of the Legislature. **Walker** said that would be his thought, too. It seems clear that with B-10 and B-11 licenses calculated over a five-year period, you don't use perspective if you've got five years. It seemed silly to use one year and look out four when you have five years, especially when the idea was to sell an average of 5,500 continuously. **Murphy** said he agreed. The five-year rolling average is a far better approach. **Walker** asked if they were looking for Commission action on this.

**Mott** - I think we have to make this decision. Both the blue sheet and the yellow sheet come down to we have an oversell, one more significant than the other. Maybe we can quickly go through the summary of the public comment and then we are in need of action to move on it. **Walker** asked if that would be to establish a rule.

**Mott** - To adopt the annual rule that was put out for comment in September, and then the principal issue is what do you want price to be of this license and the target quota. Those are the two important pieces in that rule.

As far as the public comment goes, we did put this out as well as we could. We have some news releases. To be real honest, it's hard to communicate with non-residents. We put it on our Web site and did the best we could to get comment on it. We got ten comments back; they're in your binder. I'd characterize eight of them opposing the increase, predominantly from outfitters. One was neutral who brought in another issue that wasn't really relevant, and another person who said the fees should be higher. Then we got three more that I didn't want to toss that came in after and I'll hand those out. The sum of those is a resident opposed to non-resident fee increases and thought the residents should to be paying higher fees. An outfitter opposed the fees because he thought it was harder to sell the licenses and a resident who supported it but felt there needed to be a hunter ethic program for non-residents. Got 13 total comments. A main issue here is showing compliance with the law. It's a Commission responsibility and I think that should be right up there in the deliberation, which is what the statute says and what the Legislature has mandated the Commission to do. That is to maintain a five-year average, however you compute it, to sell the licenses. There wasn't anything more substantial than that in the public comment we got. We want to make sure you understand the numbers and the computations.

**Hagener** - You might want to clarify what did to out for the tentative so everybody understands what was proposed. **Mott** said what went out was keeping the B-11 license at the same price, but increasing the B-10 license to \$1,100 and lowering the target to 5,400. That's what the public comment was based on. **Walker** said the material part of that is with the fee increase, the target would have been the same no matter what price we're looking at. **Mott** said the target quota is a little misleading in a way. If the outfitters have their paperwork in by March 15, we're going to sell them a guaranteed license. If we don't sell up to the 5,400, we'll just continue selling until we get to 5,400, not 5,500. That's where the target kicks in and it's a little confusing. You could adopt a 5,400 target and we could sell 5,700 licenses if all the forms and paperwork come in on March 15 of next year. **Walker** asked if the 5,400 target was the result of the rolling average. **Mott** said, "Yes." It's higher than the number on my sheet there. I was showing 5,175 as the number we need to hit on the blue sheet. If you back out refunds, we should be close to that number. **Dascher** said they proposed leaving deer at \$850; which was the same as what they had. The only one they raised was the Elk Combination license that was consistently oversold. In talking with folks and reading comments coming across her desk, she was intrigued with part of Jean Johnson's proposal that they stop selling these licenses on March 15. Asked where we are we in numbers by March 15? Are we way under, are we close? What would we do to the outfitters if we stopped selling them on March 15? **Mott** said on March 15, for the B-10 they sold 5,711. If that were to happen again, they would still sell 5,711. Whatever it is they sell as of March 15, they shut it down. They compared refunds so far this year, and had a fairly liberal refund policy based on the Sept. 11 attack versus fire season. Their refunds were actually higher for fire season. **Murphy** said the statute says it is basically supply and demand driven. The question on the B-10, is a \$125 increase too much, or would \$50 or \$75 be enough to meet the demands placed on this by the statute? Outfitters seem concerned that this is too high an increase. If we don't raise this at this point, will we be behind two or three years from now and have to force it even higher? **Mott** said it is amazing the demand for this license and the people's willingness to pay. From strictly an economist's point of view, something should be done this year. That's speculative, and there are a number of variables they are dealing with. As far as showing compliance with the law, showing intent and responsiveness to what the law says is important. **Dascher** said she didn't know how they could let it continue going over year after year. If they do that for several years running, then they will have to jump the price so high, or knock the numbers down so low. Then they've also done an injustice to the outfitter business.

**Walker** - I looked at it a little differently as to what was the downside. The downside would be an undersell. Because of our computation, we have a way of making that up. You can argue those who would be disadvantaged by that, but you can't make it up to the individuals. We have a number of variables with our hunting season that causes that to happen anyway. I tend to support notching this up as was the intent to begin with. **Dascher** said it is the total that people are worried about, psychologically. Increased it \$125 over what it had been. Said she realizes that perhaps they're leaving out a segment of the population, the blue-collar worker who saves for four or five years in order to take this one outfitted trip. They are now moving to a different class of folks with this. She regrets that and doesn't like to see it happen. At the same time, must go with Legislative intent. It has to be a market-driven thing to keep these numbers. **Murphy** asked how long the statute has been in effect with the language that is in here. **Mott** said it was addressed in the 1995 session. The law went into effect in March 1, 1996. They just completed the sixth year.

**Walker** - Asked for comment from audience.

**Jean Johnson**, Executive Director, Montana Outfitters and Guides Association - If you hear the comments, the motion might be different. The first five-year period the Commission recognized didn't know what the price would be, so took the five years as a block. The first year the B-11 oversold by 800 licenses. If you adjusted the following year, you would have 1,500 for sale. The Commission in its wisdom amortized that out over the four years left. The second year it oversold by 300 and you amortized that out by 100 a year over the period. So the B-11 price didn't spike up and then drop down. It was a consistency that was good for us and good for you.

That was the past. If you want to do a rolling average, should treat both sides the same. On the B-11 because \$850 was a big price and there were other reasons for that. The spread between \$850 and \$975 encouraged people to buy the big one and then put in for a special elk permit. If they don't draw, they just pitch the elk portion and hunt deer on a \$975 license. It was a factor; small gap and encouragement to buy the big one. The B-11 not only did not sell out on March 15, it took to the end of August to sell 2,300 licenses. If you want to do a rolling average, I suggest you look at the B-11 side. Available for 2000, 2,891 licenses. You couldn't sell 2,300 at \$850 by March 15, and now you're going to sell 2,891 at \$850. Why? If it's fair on one side, must be fair on the other. If you're going to raise the price of the B-10 because it oversold, then you need to correct on the other end. So suggest going back to \$775 price in 2000 and cut it off on March 15 regardless. Listen to us and not an economist. Things will not be better by March 15. I wish you wouldn't raise it to \$975.

**Mulligan** - Why you want both the cutoff on March 15 and the reduction?

**Johnson** - I didn't know 2,891 licenses. I was thinking 2,300 and it took to the end of August to sell it out. So lower the price and leave it open. That pool for the B-11 is really small. It's not the same as the B-10. In something that small, you never have a chance to undersell if you leave them available until they are gone.

**Murphy** - I want to meet the intent of the Legislature and they say market-driven. I don't necessarily agree with that. I think we are changing the social status of the people hunting and I don't like that. I wouldn't have any trouble supporting a decrease on the price on the deer licenses if we've undersold this much. **Dascher** said she didn't have any problem with that either, but you would realize by doing that, now we oversold, the next go around we'd have to raise the price again. This fluctuation is something we were trying to get away from. **Johnson** said wouldn't back off the March 15 date if it wasn't such a big number there. The 623 extra licenses is a lot. Said she would give up the March 15 on that, on a one-year basis. There's no reason to have those B-11 licenses going out to the end of August. **Mulligan** said he didn't know if the intent was to have a safety net or to try to meet that number. Is it best to not oversell by the date or is it best to manipulate with the price? When he hears market-based, in his mind that means manipulate with price. **Murphy** asked what was the significance of the March 15 deadline? Do we have the option of cutting it off March 15 or extending it to some other date? **Dascher** said she believed the Legislature said March 15 and they could go beyond if they had not sold that many. **Johnson** said you do it as an Annual Rule. You decide now what the cutoff

date will be. **Dascher** said usually what you do is set March 15 and if they don't meet their 2,300, then just allow them to continue to sell until they do reach that. **Walker** said the importance of that date is the outfitter has made the booking and makes the application before March 15. He knows he will get the license. There's major value in that. **Dascher** said after that, it's on a first-come, first-served basis. **Walker** said you began your discussion by citing someone knowledgeable going through the numbers and determining this \$125 difference in the two licenses was causing people to go for the B-10. Now we're possibly going to eliminate that problem if we drop this. That should cause people to put in for what they actually desire, not for what they might get. That's an unknown as well. **Johnson** said the safety factor here of 623 is a substantial number. **Mulligan** said especially since that's only relevant to March 15 and the odds of us selling 2,891 by March 15 are extremely slim. We are not going that number if it is after March 15. We aren't going to put us further in the hole the other direction.

**Mott** - To clarify this business of the 2,891, the blue sheet B-11 license, if we adopt this rolling concept can play with the numbers a bit. So a year from now when we're sitting here trying to debate this, the numbers will be 1999, 2000, 2001 and what we well if we adopt the target of 2,891. If you add those all up, they add up to 9,527, which means there would only be available for the following year 1,973. You have to be careful with the number that you're dropping off. Jean has told me a number of times about stability. Just factor that into the overall equation. If you go the full 2,891 it's going to cause some instability a year from now if we sell that number.

**Mary Ellen Schnur**, Chairman, Chairman, Montana Outfitters and Guides Association Fish and Game Committee- I didn't see these numbers until about an hour and a half ago. We have to remember we're working on an average over five years, not a total. When you average out the last four years on the B-10 on that blue sheet from 1998 through 2001, your average over for those four years is 5,566 licenses. That's not a lot over 5,500. Would have to sell 5,534 this year to meet the average. That doesn't justify \$125 increase. Clients are fed up and will go elsewhere. We are going to British Columbia and we're going to Wyoming. They are tired of being "held up" by the state of Montana. I am confident you won't sell 5,400 licenses at \$1,100 each. With economy and world situation what it seems to be, if you left the license at \$975, you might not even sell 5,500 next year. If you raised it to \$1,000 I doubt you could sell 5,400. I urge you to be real conservative. Only oversold by 66 this year. Oversold by a lot the year before and nobody knows why.

**Mulligan** - Could you clarify for us on that number?

**Mott** - I did the math real quick trying to get back some stability on that number a year from now. On the B-11, if you look at the 2,891 target on blue sheet, if you were to lower that down, the exact number is 2,565. So go with the exact number. If you sold that number this upcoming year, then you would want to sell exactly 2,300 the following next year.

**ACTION:** **Mulligan** - I move we approve the proposed B-10 license at \$1,100 for 5,400 and reduce B-11 to \$775 for 2,565 licenses and sell to the target by letting it run. **Dascher** seconded. **Walker** asked for discussion.

**Elaine Mann**, Broadwater County Commissioner - I'm concerned that if you up the price it will be people who call for outfitters rather than just coming themselves. If we drop one more business in Montana, is that okay? If the road hunters who don't get game don't come back, is that okay? If we don't get our quotas on tags and we have that much more wildlife out there we can't handle in the rangelands and in the mountains, is that okay? I'm just concerned about the big picture.

**Mulligan** - If this market-based system is putting the industry at risk, then maybe the industry should go back to the Legislature. **Schnur** said she didn't think market would bear \$1,100. **Dascher** asked how many licenses at \$975 were sold by March 15. **Mott** said they sold 5,711 by March 15. **Murphy** asked if the price were set at something less and they exceeded the market, and then had to come back in the next go-around and increase it even more, would that be a worse impact on the business? **Johnson** said it's the stability of having \$975 for two years before breaking the \$1,000 barrier that means something to the outfitting industry. The Board of Outfitters has taken a hard line on the inappropriate use of a certificate that leads to a guaranteed license. **Dascher** said they have been at \$975, they oversold and if they rolled that back to \$975 again, will probably oversell again. Next year then would have to come back requesting a big hike. **Johnson** said it would be more palatable to have \$975 two years in a row and then have a big hike the following year. **Schnur** asked how many outfitters are trying to subtract the additional cost of the license from their price. **Walker** said these choices aren't very easy. He hunts away from Montana and the price isn't the license; it's the total bill. We can argue back and forth at some length. My experience here is short. I look at the B-10 license and I see what the reward was for hanging in at \$835. We got ourselves in trouble. By not following the mandate of the Legislature, we not only create a situation that's hard to recover from, we dig a hole for the next year. I think Commissioner Mulligan's effort to roll back the B-11 is interesting. I am only nominally supportive of that. I agree that we need separation of the two. We have a motion, we have an amendment to that motion and that was seconded. **Mulligan** said he didn't think there was actually an amendment. They were just clarifying the words for him so he got it right.

**Dascher** - We have a motion on the B-11 at \$775 with the target of 2,565, and the B-10 as proposed at \$1,100 by the department and as it went out for Tentative with a target of 5,400. *I'm going to withdraw my second of the motion.*

**ACTION: Walker** - *I appreciate that. I will make the second. We have a motion and we have a second. We've had ample discussion. If there's something that you haven't said that you wish to, I will allow those of you in the audience. Not seeing that, I'm going to ask for the question. In favor 3, opposed 2.*

**18. Bonus Point System Rules - Final. Mott** - We submitted in September an ARM rule to clarify a couple of points in our bonus point rule. We were clarifying two main points. The first was that in order to have a bonus point, you must apply for the license to begin with. What the rule said was, you **had** to apply. Second issue was allowing non-residents who applied for B-10 and B-11 license to move those around between those two licenses. They can interchange those for the bonus points. Some asked about moose, sheep and goat. But those are quite dissimilar compared to the B-10 and B-11. Trying to show the contrast. Doesn't think intent was for



people to move those bonus points around. You keep them with the species you earned them on, i.e., moose, sheep and goat. But the B-10 and B-11 are similar enough and as a customer service should allow that for the non-residents interested in the B-10 and B-11 licenses. They asked for public comment and got none. It's in effect this year for moose, sheep and goats this year. For deer and elk it's the following year.

**Mulligan** - If we give a refund because of world situation, my understanding is we will also give them their bonus points back for next year. If somebody drew a license this year but then because of the world affairs (for instance someone in the military affected by the situation) and we give them a refund, we could not transfer that license because we don't have the legal way to do that. Can we give them the bonus points? **Walker** said he was told earlier you made refunds in September without regard to the Sept. 11 situation. We still are giving full refunds to those in the military with a conflict here. **Hagener** said FWP made that decision that people who were directly impacted could get 100% refund and they talked a little bit about giving the bonus point of the preference toward the next year. The only differentiation was those were the ones directly impacted. **Mott** said in the preference rule, they have the flexibility when they refund a license like this it's considered as being unsuccessful and then they would get a bonus point the following year. They hope that if the Commission sees these proposed changes as okay, the department would ask the Commission to accept this as the final rule at this meeting.

**Walker** - I will entertain that motion, but I am still having a problem with these bonus points. We'll have a number of people that you issued a refund to who, with or without this disaster, would have been calling for a refund for other reasons. They shouldn't get a bonus point. How are you going to implement that?

**Nancy Kraft**, License Bureau Chief - We've only had a couple of extenuating circumstances where people wanted a rain check for next year and wanted us to issue them a license next year because they had to get a refund this year. We were unable to do that so we offered them the option of getting a refund this year and re-instituting their bonus point next year. There have only been two or three individuals that we've offered it to. We're still waiting for them to respond. It's not an across-the-board policy we're making; it's just in a couple of unusual circumstances.

**ACTION:** *Dascher* - I move that we accept the bonus points system as presented by the department as a final. *Lane* seconded. **Walker:** We have a motion and a second on the bonus points. Do we have comments from the audience on this question? There being none, all in favor signify by saying "aye." **Motion carried.**

**19. Mandatory Bear ID Testing - Final.** **Ron Aasheim**, Conservation Education Administrator - You all received the information packet on bear identification. Glenn Erickson will go through status of bears. Tom Palmer will present an overview of what the testing will look like on the Web page. It's simple to do and informative on just what we're talking about. The Commission in December last year asked us to take a look at a mandatory identification testing requirement for black bear hunters. At the August meeting, you adopted the tentative that is in your packet. In the last 7 years, 14 grizzly bears were killed by black bear hunters.

Potential for litigation is very real. Bear ID testing should strengthen position in court. They direct mailed this information to a select group and had significant response.

**Glenn Erickson**, Wildlife Management Bureau Chief - Gave a PowerPoint presentation on the status of the bear.

**Aasheim** - Would require everyone purchasing a bear license to pass a bear ID test. Those passing the test would receive a certificate. Asking for approval of tentative. If get a yes, then will go to how to administer this. Went over summary of the public comments they received. Recommend that the Commission approve the tentative. Believe better identification would go a long way in court. Most contentious issue was that of use of proctor/monitor in testing. Would review this annually. **Murphy** asked if once you take test, will you have to do it again? **Aasheim** responded that for the first year, would have to present certificate. For the subsequent years, a previous year's license would show they passed it. **Murphy** said he is bothered by always being on the defensive about this. The grizzly bear is no different than bull trout as far as mistaken ID. Isn't there still the potential for a lawsuit? **Aasheim** responded that the department has been put on notice there is strong potential for a lawsuit. **Mulligan** mentioned that the publicity is much higher with grizzly than bull trout take. **Erickson** said the ESA is driven by USFWS.

**Johnson** - Comments show that 21 responders support stricter testing. They support the program FWP has proposed.

**ACTION:** **Mulligan** - *I move to approve testing as adopted by the department.* **Dascher** seconded. **Mulligan** - *I think testing as proposed by the department will satisfy intent.* **Motion carried unanimously.**

Meeting adjourned at 5:30 p.m.

Approved this 14<sup>th</sup> day of December, 2001